TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted]

No. [redacted] 99

J. F. LAWRENCE, C. C. TAYLOR, EDWIN DABNEY, ETC., ET AL., APPELLANTS,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED MARCH 24, 1939

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 861

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[fols. a & 1-2½] Citation, in usual form, showing service on C. B. Stuart, filed March 17, 1928, omitted in printing.

[fol. 3]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OKLAHOMA

No. 207 E

St. Louis-San Francisco Railway Company, Plaintiff,

vs.

J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma; Frank C. Carter, Fred Capshaw, and C. C. Childers, Individually and as Members of the Corporation Commission of the State of Oklahoma, Defendants

Complaint—Filed Jan 11, 1927

To the Honorable Judge of the District Court of the United States for the Northern District of Oklahoma:

The St. Louis San Francisco Railway Company, plaintiff, a corporation created and organized under and by virtue of the laws of the State of Missouri, having its principal place of business at St. Louis in said State of Missouri, brings this bill of complaint against J. F. Lawrence and C. C. Taylor and Edwin Dabney, Attorney General of the State of Oklahoma, and Frank C. Carter, Fred Capshaw and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and thereupon plaintiff alleges and states:

I

That the St. Louis San Francisco Railway Company is a corporation duly organized under and by virtue of the laws of the State of Missouri, with its principal place of business in the City of St. Louis, in said State, and is a

citizen and resident of the State of Missouri, and is not a [fol. 4] citizen or resident of the State of Oklahoma, and that said railway company is authorized, as provided by law, to transact business in the State of Oklahoma; that its railroad is engaged in both intrastate and interstate commerce, and that it operates such railroad in the States of Missouri, Kansas, Arkansas, Oklahoma, Texas, Mississippi and other States, and that for many years it has owned and operated lines extending from Kansas City and St. Louis, by continuous lines, to and through the State of Oklahoma, and through the City of Sapulpa, located in said State of Oklahoma and the Northern Federal Judicial District thereof.

II

That Edwin Dabney is a citizen and resident of the State of Oklahoma and the Western Federal Judicial District thereof, and is the duly elected, qualified and acting Attorney General of the State of Oklahoma; that Frank C. Carter, Fred Capshaw and C. C. Childers are citizens and residents of the State of Oklahoma, and of the Western Federal Judicial District thereof, and are the duly elected, qualified and acting members of the Corporation Commission of the State of Oklahoma; that J. F. Lawrence and C. C. Taylor are citizens and residents of the State of Oklahoma and the Northern Federal Judicial District thereof, living in the said City of Sapulpa in said Northern Federal Judicial District.

III

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of $3,000.00, and that plaintiff's cause of action as hereinafter shown arises under the Constitution and laws of the United States, and especially under Section 8, Article I of said Constitution, which provides in substance that the Congress of the United States shall have power to regulate commerce among the several states, and under the Fourteenth Amendment to said Constitution, which provides that no state shall deprive any person of his property without due process of law nor deny that person the equal protection of the laws.

[fol. 5] IV

That during the month of February, 1917, defendants, J. F. Lawrence and C. C. Taylor, appearing on behalf of themselves, the Chamber of Commerce of the City of Sapulpa, and the citizens of said City of Sapula, filed complaint with the Corporation Commission of the State of Oklahoma, which had for its purpose the prevention of this plaintiff from moving its said shops and division point from the City of Sapupla to the City of Tulsa on its said line of railroad; that thereafter and on the 15th day of February, 1917, Order No. 1232 was issued by the Corporation Commission of the State of Oklahoma, temporarily restraining plaintiff from moving its said shops or division point from the City of Sapulpa to the City of Tulsa, or doing any act relative thereto; that on the 29th day of December, 1926, upon application of said defendants, J. F. Lawrence and C. C. Taylor, appearing for themselves and for the Chamber of Commerce of the City of Sapulpa and for the citizens of said City, the Corporation Commission of the State of Oklahoma made and caused to be served upon this plaintiff Order No. 3029, which reads as follows:

"This cause coming on to be heard on this 29th day of December, 1926, upon motion of the complainants, and it appearing that the defendant is taking steps toward the removal of its shops and division point from the City of Sapulpa in violation of the order of this Commission entered on the 5th day of February, 1917, and in violation of the Act of the Legislature passed in 1917, it is ordered by the Commission that said cause be set down for hearing on the 17th day of January, 1927, and that in the meantime, and until the further order of the Commission, the defendant be, and it is hereby prohibited from moving its shops or division point from the City of Sapulpa, from changing the runs of either its passenger or freight trains, or from taking any other steps towards changing its division point for either passenger or freight service from the said City of Sapulpa.

"It is further ordered that a copy of this order be served on the defendant.

"Done at Oklahoma City, Oklahoma, on the date first above named."

That a hearing on said complaint filed by said defendants as set forth in said order, is set before the Corporation Commission of the State of Oklahoma for the 17th day of January, 1927.

[fol. 6] V

That the Statute of the State of Oklahoma referred to in the above named order as "the Act of the Legislature passed in 1917", and all the Statutes of the State of Oklahoma relied upon by said defendants for the jurisdiction of said Corporation Commission in said action, are contained in Compiled Oklahoma Statutes, 1921, as follows:

"3482. Removal—Permit.—That no person, receiver, firm, company or corporation owning, operating or managing any line of steam railroad in this State shall be allowed to remove railroad shops or division points which have been located at any place in this State for a period of not less than five years without previously securing the permission of the Corporation Commission to make such removal.

"3483. Corporation Commission—Jurisdiction.—If, and when any such person, receiver, firm, company or corporation desires to remove any such railroad shops or division point described in Section One of this act, it shall be his duty to file an application with the Corporation Commission setting forth the present location of such shops or division point and the reasons for such removal, and thereupon the Corporation Commission shall have full power and jurisdiction to entertain such complaint, but before hearing the same or making any order permitting such removal to be made, said cause shall be set down for hearing, not less than ten days' notice shall be given the city, town or village in which or at which such shops or division point have been maintained and after giving all parties interested a full and complete hearing in the premises the Commission may in its discretion permit or refuse such request for a removal.

"3484. Hearing Before Corporation Commission.—When an application is filed before the Commission for the removal of terminals or car shops, as provided in Section Two the Commission shall hear evidence on the relative efficiency and expense of handling traffic through the pro-

posed terminal as compared with the present facilities, and shall consider all other facts and circumstances affecting the various interests involved. In determining the adequacy of the present facilities the Commission shall consider the same increased by an expenditure equal to an amount necessary to remove the same to the proposed location or an amount equal to the necessary expenditure to establish such facilities at the new location. It is hereby further provided that the Commission shall hear evidence and shall make a finding of fact as to the sanitary and habitable conditions of the proposed location with reference to whether the same would endanger the health of the employees of the applicant or the health of their families. If the Commission should find that the sanitary or habitable conditions at the proposed location of said terminal facilities would endanger or injuriously affect the health of the employees of said applicant or their families, the Commission shall deny said application and order the said terminal facilities and car shops to remain at the present location.

[fol. 7] "3485. Proof—Burden Upon Applicant.—On any such hearing, as provided in this act, the presumption shall be against the removal, and the burden of proof rest upon the applicant to show that such removal ought to be made.

"3548. Transportation Companies Must Maintain Repair Shops in State.—Transportation companies operating within this State which now have in existence roundhouses or machine shops for the repairing of locomotives, engines, and cars, or which may hereafter establish such roundhouses or machine shops for such purpose, shall hereafter maintain such shops and round houses with sufficient equipment and employees to keep in proper repair all rolling stock, locomotives, engines, and cars used within this State in the transportation of passengers and freight and such transportation companies shall hereafter cause all such rolling stock, locomotives, engines and cars to be repaired at such shops or round houses and kept in a safe and serviceable condition and no such repairs shall be done outside the State of Oklahoma, if such repairs can be done at such company's shops within this State."

VI

Premises considered, plaintiff complains of such jurisdiction and injunctive action on the part of said Corporation Commission, because the foregoing Statutes upon which the Commission seeks to base its jurisdiction are unconstitutional and void, and said Commission therefore is without power to act under said Statutes, in that they are not a proper exercise of the police power of the State and deprive plaintiff of due process of law and of equal protection under the law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Plaintiff shows to the court that such Statutes are arbitrary, unreasonable and unnecessary, because neither the shipping public, the traveling public nor the public at large has any interest in the place where railroad shops or division points shall be located on said railway company's lines; that the location of said shops or division point does not serve to protect the public morals, the public safety or the public health, and the right of the State of Oklahoma to enact such Statutes cannot be traced or referred to any legitimate or well known source of police power. Such Statutes are arbitrary, unreasonable and unnecessary, and are an undue [fol. 8] and unconstitutional interference with the right of a railway company to manage its property and operate it for the best interests of the public and the stockholders of such company, and to operate the same economically, which, by law, it is required to do, and at the least expense necessary to serve the public, and are, therefore, an invasion of the rights of such company prohibited by law and the Constitution of the United States as aforesaid.

VII

That said Statutes are unconstitutional for the further reason that said sections show on their faces that they were enacted purely to serve local interests and not to serve the public, and this regardless of whether they injuriously affect the property of the railway company and interfere directly with interstate commerce.

VIII

Plaintiff says that said sections of the Statutes, taken together, declare that if division points or shops have been located in any particular place in the State of Oklahoma for a period of five years, the presumption against the right of removal shall obtain against the railway, and that the burden of proof shall be upon the railway. Plaintiff says that such provision in such sections is unconstitutional in that it is an arbitrary exercise of police power; that the five-year period as announced in said provision has no just relation to the proposition as to whether the right of removal exists and that the change in the rules of evidence by virtue of said five year period, is unconstitutional, in that it deprives the plaintiff of its property without due process of law and of the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Plaintiff, therefore, alleges that the Corporation Commission aforesaid has no power or jurisdiction to act in the premises under said unconstitutional Statutes, nor to issue its injunctive process against this plaintiff prohibiting it from removing its shops, division point and appurtenances thereto from the said City of [fol. 9] Sapulpa, without obtaining the consent of such Commission.

IX

Plaintiff further says that said Statutes are unconstitutional, void and of no effect for the reason that same purport to grant to the Corporation Commission authority to decide questions relative to, and to directly regulate, interstate commerce, and that if said Corporation Commission is given such authority by said Statutes in said proceedings pending before said Commission, such decision will, in effect, regulate the interstate commerce business of this plaintiff.

X

Plaintiff further shows to the court that said Statutes are unconstitutional, void and of no effect in so far as same are applicable to said purported action pending before the Corporation Commission of the State of Oklahoma, for the reason that the question as to whether or not plaintiff be

permitted to remove its shops and division point to the City of Tulsa, or be compelled to continue said shops and division point at the City of Sapulpa, is, by reason of the facts hereinbefore related, one directly affecting interstate commerce, and a decision of said question by said Corporation Commission will be a direct regulation of interstate commerce, and if said removal is prevented by the order of said Corporation Commission, then said order will be a direct burden upon and a direct regulation of and interference with interstate commerce.

XI

That on or about the 1st day of January, 1927, plaintiff prepared and published its train schedule, changing the run of certain of its interstate passenger trains operated by defendant for the purpose of carrying interstate passengers, interstate express and interstate United States mail, by providing therein that said trains run from Oklahoma City to Tulsa and change crews at Tulsa, and from Fort Scott, Kansas, to Tulsa, and change crews at Tulsa, and from Monett, Missouri, to Tulsa, and change crews at Tulsa; that said schedule was prepared and published by [fol. 16] plaintiff after mature study and deliberation in an effort to promote, change and regulate its interstate commerce business. Plaintiff says that said schedule, if put into effect, will greatly facilitate and promote the interstate commerce business transacted by plaintiff; that owing to the increase in business transported over plaintiff's line of railroad and the recent change in the equipment and motive power used by plaintiff and the improvement thereof, and owing to a general scheme recently adopted by plaintiff with relation to its interstate commerce business involving changes in the location and even the elimination of various division points throughout plaintiff's system of railway in the States of Missouri, Kansas, Oklahoma, Texas and other States, it has become necessary and imperative to the proper conduct of plaintiff's interstate business that said changes in said runs be made; that the order of the Corporation Commission hereinafter referred to prevents plaintiff from putting into effect its said schedule with reference to its said interstate trains, and is a construction

by the Corporation Commission of the above named Statutes to the effect that said Statutes grant to said Commission the power and duty to regulate interstate commerce.

XII

Plaintiff says that the restraining orders heretofore issued by said Corporation Commission as hereinbefore set forth are void and of no effect for the reason that said orders attempt to regulate and interfere, and do regulate and interfere with the running of interstate trains; that said orders interfere with this plaintiff materially in the management and operation of its said interstate trains, and are unreasonable, unnecessary and constitute a burden upon interstate commerce and are unconstitutional and void.

XIII

Plaintiff would further show to the court that the above named Statutes as construed by the Corporation Commission of the State of Oklahoma, in their application to the questions herein involved, are unconstitutional, confiscatory [fol. 11] and void by reason of the particular facts applicable to this case. In this connection plaintiff would show to the court, as follows:

(a) That more than thirty years ago the St. Louis & San Francisco Railroad Company built and acquired lines of railroad extending from the cities of St. Louis and Kansas City to Afton, Oklahoma, at which point said lines of railroad united and extended in a single line in a southwesterly direction into the State of Oklahoma and the cities of Tulsa and Sapulpa in said State, and thereafter built lines of railroad extending south from the said City of Sapulpa into the State of Texas to the City of Sherman in said State, and a line of railroad extending west from said City of Sapulpa, through Oklahoma City, Lawton and to the City of Quanah in the State of Texas; that owing to the character of the roadbed constructed by said railroad company and the character of motive power and equipment at said time necessarily used by said railroad company, it became and was necessary and convenient in the transaction of the business of said railroad company that

division points be located on said railroad at a distance of not to exceed one hundred miles from each other; that owing to the relative size of the different cities through which said lines of railroad passed, and owing to the fact that at the times of the construction of said lines of railroad as heretofore described, said railroad company received a large volume of its business from the vicinity of the City of Sapulpa, and owing to the further fact that it appeared to those having to do with the construction of said lines of railroad at said times that the City of Sapulpa would become the business shipping center of its locality, said railroad company located, built and constructed at the said City of Sapulpa certain railroad shops and a division point on said lines of railroad, and that said shops and division point have since been maintained and operated at the said City of Sapulpa.

(b) That heretofore and on the 1st day of November, 1916, this plaintiff became the owner by purchase of the above named lines of railroad and railroad shops and has since owned and operated same.

[fol. 12] (c) That although from the conditions existing at the time of the construction of said lines of railroad it appeared to those having to do with the construction of same that it would be to the best interest of said railroad and the shipping public that certain railroad shops used in connection with said lines of railroad and a division point thereon be located at the City of Sapulpa, and that the City of Tulsa would be of minor importance as a railroad and shipping center, conditions have so changed as to make it imperative on the part of the operators of said lines of railroad to locate extensive shops and yards at the City of Tulsa, and at a point therein known as West Tulsa, and to move said division point from the City of Sapulpa to the said City of Tulsa; that at the time of the construction of said lines of railroad, the City of Tulsa was comparatively small, and it appeared to those constructing said lines of railroad that the City of Sapulpa would develop into a large city and an important shipping center, and that Tulsa would remain a comparatively small town and its shipping interests would be of minor importance, but notwithstanding said appearances, the City of

Tulsa has developed into a city of approximately 125,000 inhabitants, and has become one of the largest, if not the largest, shipping centers in the State of Oklahoma; that plaintiff now owns and operates and has for many years owned and operated a line of railroad extending in a northwesterly direction from said City of Tulsa through the cities of Pawnee, Perry and Enid, and that said line of railroad has for many years brought a great volume of freight and passenger business into the said City of Tulsa; that immense oil fields and oil properties have been developed and constructed and are being operated in the vicinity of and in all directions from the said City of Tulsa, and the said City of Tulsa has become the center of said operations; that other industries, transacting great volumes of business, have been located and are now being operated in the said City of Tulsa and in the vicinity thereof, and that said industries use the said City of Tulsa as their shipping center; that the City of Sapulpa has developed only to a very minor degree; that the population of said City at this time [fol. 13] is approximately 20,000 people; that very few of the industries operated as hereinbefore set forth, use the City of Sapulpa or the terminals of said lines of railroad located thereat as a shipping center.

(d) That at the time of the location of said shops and division point heretofore described at the said City of Sapulpa, it appeared to those having to do with the construction and operation of said lines of railroad at said times, that the topography of the ground in the vicinity of said yards and said shops would permit the location and construction thereat of sufficient facilities for the transaction of all shipping business necessary to be transacted at the shops and division point located in that vicinity, but plaintiff shows to the court that owing to the great increase in the volume of business which must be transacted at the shops and division point located in said vicinity, and owing to the fact that the shops and yards as now located at said City of Sapulpa are hemmed in by the business houses of the City of Sapulpa on the south of said yards and shops, and by a great hill immediately adjacent to said shops and said yards on the north thereof, and owing to the further fact that said shops and said yards are located on a decided

curve in the right of way of plaintiff at said point, it has been and will continue to be impossible for this plaintiff to construct at said point sufficient shops and yards to transact the business necessary to be transacted at the division point shops and yards which must be located in said vicinity or at or in the vicinity of the City of Tulsa.

(e) That at the time of the construction of said railroad lines as hereinbefore set forth, owing to the condition of the roadbed, the character of the motive power, engines and other equipment, it was necessary for the proper conduct of the business transacted by said railroad company to locate division points and large shops at points not to exceed one hundred miles from each other, but in recent years the condition of the roadbed, bridges, etc., has been improved to such an extent, the motive power used by those operating said lines of railroad has been increased to such [fol. 14] an extent, the engines and other equipment used in the transaction of said business have been enlarged to such an extent that at this time it is necessary to the proper conduct of said business to increase the distances between the division points and large shops, and it has become and is necessary to remodel the plans of operation of said railroad lines, in that the division points and shops be located much farther apart, and that longer runs be made by crews in charge of said railway company's trains; that in carrying out this necessary scheme, it is necessary to locate the shops and division point to be located in the vicinity of Sapulpa and Tulsa, at the City of Tulsa.

(f) That this plaintiff is now and has been at all times mentioned in this complaint engaged extensively in interstate commerce; that all trains running through the yards and division point described herein are engaged in interstate commerce; that both the switch and road engines used by plaintiff in and through said yards and shops are constantly engaged in interstate commerce; that there is seldom a train movement made in the vicinity of said shops that has not for its purpose the furtherance of plaintiff's interstate commerce business; that a large proportion of the shipments hereinbefore mentioned originating at and passing through the City of Tulsa, are shipments destined to points outside the State of Oklahoma, or shipments passing through the State of Oklahoma, or shipments from

points outside the State of Oklahoma, destined to points within the State of Oklahoma; that plaintiff with its said lines of railroad is engaged in an extensive interstate railroad business, carrying a large volume of commerce, both freight and passenger, from Kansas City, Missouri, and points north and east, to Tulsa and other points within the State of Oklahoma, and to points south in the State of Texas, and from St. Louis, Missouri, and points north, east and south to Tulsa, and other points within the State of Oklahoma, and points in other states to the south; that the facilities and equipment constituting the shops and division point herein described, are necessary and imperative to the transaction of said interstate business, and are now being and have for a long time been used extensively [fol. 15] in the carrying on of said business.

(g) That those of plaintiff's officers and managers having to do with the management of its business, have, after mature consideration and deliberation, decided that it is to the best interest of the shipping public, passengers, and those having business with said railway company, and to the best interest of plaintiff that its railway shops and division point now located at the City of Sapulpa, be moved therefrom to the City of Tulsa and located therein at a point commonly known as West Tulsa and consolidated with the shops and yards now located at said point, and that such removal will greatly promote, accommodate and aid plaintiff's interstate commerce business; that as a result of its declaration of its intention to remove its said shops and division point, the actions on the part of defendants hereinafter complained of, were taken.

(h) That a removal of its shops and division point from Sapulpa to Tulsa, a distance of about eighteen miles and a consolidation of said shops with the shops now located at the City of Tulsa, as hereinbefore described, will enable plaintiff to promote and aid its interstate commerce business by eliminating annually hundreds of thousands of dollars of operating expense; that among many other items, plaintiff, if permitted to execute its said plan of removal, will be able to save in wages of employes approximately $200,000.00, per annum; in operating material and equipment, approximately $70,000.00 per annum; in fuel, power and lights, approximately $25,000.00 per annum; that owing

to the fact that it has been necessary for plaintiff to construct and maintain extensive shops and yards at Tulsa in addition to the shops and yards at Sapulpa, if plaintiff is prevented from removing its said shops from Sapulpa to Tulsa, it will be necessary for plaintiff to maintain and operate, at a great expense and loss to its stockholders, two extensive sets of shops and yards within eighteen miles of each other, thus entailing great additional and needless cost and expense, resulting in great confusion and con- [fol. 16] gestion of traffic causing loss of time to shipments, and thus interfering with and placing a direct burden upon plaintiff's interstate commerce business.

(i) That in the proper conduct and operation of its railroad, it becomes necessary from time to time for plaintiff to readjust its division points and to find better and more efficient, suitable and convenient places for repair work and for keeping its rolling stock and other instrumentalities of its railway used in interstate commerce in proper condition, and that those matters are purely managerial and necessary to be confined to such railway company the better to serve the public and its stockholders and those who invested large sums of money in said railway.

XIV

By reason of the foregoing facts plaintiff says that said Statutes in so far as they have been construed and made applicable to the conditions described herein, are unconstitutional, confiscatory, arbitrary, unnecessary and void in that they, as applied to said conditions and construed by said Commission, grant to said Commission authority, to issue orders and decide questions directly regulating, affecting and constituting a burden on interstate commerce; that the question as to whether or not this plaintiff be permitted to remove its division point and shops from Sapulpa to Tulsa is one vitally and materially affecting the extensive interstate commerce business of plaintiff; that the orders of said Corporation Commission heretofore issued as hereinbefore set forth constitute a direct interference with, a regulation of, and burden upon plaintiff's interstate commerce business; that the orders that said Corporation Commission will necessarily issue as a result of said proceed-

ings and as a result of its construction of said Statutes, will constitute a regulation of and interference with, and a burden upon plaintiff's interestate commerce business.

XV

Plaintiff states that to require it, under the conditions as herein described, to continue its division point and shops at the City of Sapulpa, and to prevent it from removing its [fol. 17] said shops from the City of Sapulpa to the City of Tulsa and consolidating the two at said last named City, would cause a great and irreparable loss to plaintiff and its stockholders, and place a direct burden upon interstate commerce, and make it impossible for plaintiff to comply with the Act of Congress known as the Transportation Act, requiring it to economically opetrate its property; that it would cause such needless expenditure of large sums of money as to amount to a deprivation and taking of property from plaintiff without due process of law, forbidden by the Fourteenth Amendment to the Constitution of the United States.

XVI

Plaintiff says that unless it submits to the jurisdiction assumed by the Corporation Commission by reason of the above named Statutes as construed by said Commission, and obeys the injunctive process issued against it by said Commission as aforesaid, it will be burdened and harrassed with numerous suits for penalties for its failure to so submit to such jurisdiction, and will entail great and irreparable damage; that unless restrained defendants, J. F. Lawrence and C. C. Taylor, will appear before said Corporation Commission on the said 17th day of January, 1927, with sundry witnessess and will procure an order from said Commission preventing the removal of plaintiff's shops and division point as herein described until the above named Statutes are complied with by plaintiff, and unless restrained said Corporation Commission of the State of Oklahoma, composed of defendants, Frank C. Carter, Fred Capshaw and C. C. Childers, will on said day, or at some future date to which said action is continued, take jurisdiction of said action and hearing and will, at the conclusion of said hearing, issue its order permanently prohibiting

and enjoining plaintiff from so removing its said shops and division point until plaintiff has complied with the above named Statutes, and unless restrained and enjoined, defendant, Edwin Dabney, Attorney General of the State of Okla- [fol. 18] homa, will, at said hearing and at future hearings and times, attempt to enforce said Statutes and the orders of said Corporation Commission based thereon, thus harrassing and injuring plaintiff to its great damage; that unless restrained said defendants, and all of them, will enforce the temporary restraining order so issued by said Corporation Commission as herein set forth, and prevent plaintiff from putting into effect its schedule regulating its interstate trains as herein set forth and described; that the effect of said actions on the part of said defendants will interfere with the management and operation of plaintiff's interstate commerce business to such an extent as to cause plaintiff great immediate and irreparable damage. Plaintiff says that as the effect of the action of said defendants is to interfere immediately with the management of its interstate business and the control of its interstate trains, that the danger of said damage to plaintiff's business as herein described so caused by the actions of defendants as herein set forth, is imminent, and in order to preserve plaintiff's business and plaintiff's management thereof, a temporary restraining order by this Honorable Court is necessary. Plaintiff says that it has no adequate remedy at law.

Wherefore, and for as much as plaintiff is without remedy in the premises, according to the common law, and remediable only in equity, and to the end that plaintiff may not be subjected to suits for penalties and a multiplicity of suits which will otherwise result, and will not suffer irreparable injury and damage which must result if plaintiff refuses to submit to the jurisdiction of said Corporation Commission, and to the end that plaintiff may be permitted to pursue and carry on its business without unlawful hindrance or obstruction, plaintiff prays that a writ of subpena be issued against the defendants, and that each and every one of them named and described be ordered to appear and fully submit and make answer to this bill of complaint, but not under oath, answer under oath being expressly waived, and that said defendants, and each of

them, their agents, servants and employes, and all other [fol. 19] persons acting under or through their authority, or authority of their officers and all other persons similarly situated, respectively, be enjoined by final decree, and in the meanwhile by preliminary injunction, from compelling plaintiff to submit to the jurisdiction of the Corporation Commission in the several matters aforesaid, and plaintiff prays that in the meantime a temporary restraining order be issued in accordance with its plea for preliminary injunction, and in order that said plaintiff may not suffer the irreparable injury and damage that it otherwise will and must suffer as is alleged and charged in said bill of complaint.

Stuart, Cruce & Franklin, Attorneys for Plaintiff.

[fol. 20] *Duly sworn to by Ben Franklin. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 21] In United States Circuit Court

[Title omitted]

Motion for Order Requiring Plaintiff to Restore Same Conditions as Existed Prior to Issuance of Injunction —Filed June 25, 1927

Come now, J. F. Lawrence, C. C. Taylor and Edwin Dabney, Attorney General of the State of Oklahoma, defendants in said cause, and respectfully show to the Court that on the 19th day of January, 1927, there was issued in this cause a temporary injunction restraining these defendants, and all persons similarly situated, from prosecuting the hearing before the Corporation Commission of Oklahoma, and restraining the Corporation Commission from permitting the prosecution of the hearing wherein was involved the right of the plaintiff to move its Division point and Shops from the City of Sapulpa to West Tulsa, Oklahoma, all of which appears more fully from the decree on file in this cause to which reference is made. That for many years prior to the entry of said decree the plaintiff had main-

tained a Division point and Shops at the City of Sapulpa where it employed approximately Seven Hundred men, who with their families resided in Sapulpa, and constituted an important and essential part of its population and business life; that immediately after the issuance of said temporary injunction, the defendants in said cause appealed to the Supreme Court of the United States; that with the utmost expedition they expedited their appeal; that they filed a motion to advance the cause; that the court granted this [fol. 22] motion and set the cause down for hearing on the 18th day of April, 1927, and that court expedited its decision in said cause handing down its opinion on the 31st day of May, 1927, which reversed the decree of this court granting the interlocutory injunction. Notwithstanding the fact that the plaintiff at all times knew that the appeal was being prosecuted, and prosecuted with the utmost speed and that a decision would be reached promptly in the Supreme Court of the United States, it immediately after securing a temporary injunction hurriedly moved its Shops and Division point from Sapulpa to West Tulsa, and that it has now removed all the machinery from its shops buildings; that it has closed said buildings; that it has moved all its switch engines from Sapulpa to West Tulsa except one left for local industrial use; that it has taken up several of its tracks and was engaged in taking up additional tracks when the decision of the Supreme Court was announced, at which time it discontinued further track removal; that it has changed the runs of its passenger trains which formerly terminated at Sapulpa; that it has discontinued the use of Sapulpa as a division point for freight trains, all of such trains now running into West Tulsa so that even freight destined from Oklahoma City to Sapulpa runs through Sapulpa to West Tulsa and is moved back to Sapulpa, involving a loss of two or three days; that said plaintiff taking advantage of said temporary injunction and completely ignoring the statute of Oklahoma and the orders of the Corporation Commission, has perfected the removal of its shops and division point from Sapulpa to West Tulsa.

These defendants further allege that on the 5th day of February, 1917, said defendants Lawrence and Taylor, filed a complaint in the office of the Corporation Commission of Oklahoma seeking to prevent the plaintiff in this case from [fol. 23] removing its shops and division point from

Sapulpa to West Tulsa; that on said day the Corporation Commission of Oklahoma entered an order in said cause setting said cause down for hearing and prohibiting the plaintiff from moving its shops and division point until the further order of the Commission; that that order has been in effect continuously since said time and is now in effect; that on the 29th day of December, 1926 the said Lawrence and Taylor filed a motion in said cause pending in the Corporation Commission setting up that the plaintiff in this cause, notwithstanding said order of the Commission, and notwithstanding the act passed by the Legislature in 1917, was about to move its shops and division point from Sapulpa to West Tulsa and praying an order preventing said removal; that the Corporation Commission issued an order on said 29th day of December, 1926, setting said cause for hearing on the 17th day of January, 1927, and directed that in the meantime and until the further order of the Commission defendant be prohibited from moving its shops and division point from the City of Sapulpa. All of the proceedings before the Corporation Commission are set out in full in the affidavit filed in this cause by Messrs. Fred Capshaw, Frank C. Carter and C. C. Childers, in objecting to the prayer of the plaintiff for an interlocutory injunction except the order made by the Corporation Commission of the 29th day of December, 1926, and a copy of that order is set out in the plaintiff's bill of complaint. These defendants now refer to the said affidavit and the said order of December 29, 1926 now on file in this cause as a part of this motion.

These defendants further show to the court that the opinion of the Supreme Court of the United States entered on May 31, 1927 reverses the decree of this court granting a temporary injunction, and holds that no such injunction should have issued.

These defendants further show to the court that the act [fol. 24] of the Oklahoma Legislature of 1917 (Secs. 3,482 to 3,485, both inclusive, Compiled Statute 1921) prohibits railway companies from removing their shops and division points which had been located for as much as five years, without previously applying to the Corporation Commission and obtaining an order therefor; that the shops and division point herein involved have been located at Sapulpa for approximately thirty five years; that the plaintiff has

not applied to the Corporation Commission pursuant to the act of 1917 aforesaid; that this act contains no penal clauses and does not by its own terms provide a remedy against a railway company which disobeys it, and does not by its terms confer jurisdiction on the Corporation Commission to require a railway company which has disobeyed the act to restore the status quo.

These defendants, therefore, show to the court that the plaintiff in this case has violated the expressed prohibition of the aforesaid statute of the State; has ignored and disobeyed the temporary orders issued by the Corporation Commission hereinbefore recited, and has moved its shops and division point from Sapulpa to West Tulsa at a time when these defendants and all persons similarly situated were prevented of taking any action by the interlocutory injunction issued by this court, and which the Supreme Court of the United States has held should not have been issued.

Unless, therefore, the plaintiff is required to restore the status quo existing prior to the issuance of the interlocutory injunction the citizens of Sapulpa, the employees of the railway company and these defendants will suffer great and irreparable injury.

Wherefore, these defendants move the court to make an order in this cause requiring the plaintiff to restore the same conditions with respect to its shops and division point as existed prior to the 17th day of January, 1927; that it be required to re-build its trackage at Sapulpa as such trackage then existed; to return to Sapulpa all machinery [fol. 25] and employees which have been removed by reason of said interlocutory injunction; to restore the runs of its trains and particularly its freight trains so that Sapulpa will be the division point for said runs as it was before the issuance of said interlocutory injunction, and that in general terms the plaintiff in this cause be required to restore the status quo so as to replace the parties in exactly the same positions they would have occupied had the interlocutory injunction not issued.

Edwin Dabney, Attorney General, C. B. Ames, T. L. Blakemore, Attorneys for said Defendants. Ames, Lowe & Cochran, of Counsel.

[File endorsement omitted.]

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO COMPLAINT—Filed Oct. 22, 1927

Comes now the St. Louis San Francisco Railway Company, plaintiff above named, and after leave of court having been first had and obtained, files this its amendment to the original complaint filed herein.

Plaintiff further prays that said defendants, and each and every one of them named and described herein, and all persons for whom said defendants appear in said above described cause, and all persons whomsoever, acting under or by the authority of said defendants, or any of them, be further restrained and enjoined from prosecuting, hearing, conducting or permitting a hearing to be had, or taking or permitting any further proceedings to be had in the above described cause of action now pending before the Corporation Commission, or from making, promulgating or enforcing, or causing to be made, promulgated or enforced ony [fol. 27] order prohibiting the above named plaintiff from removing any of its shops or appurtenances thereto, or its division point or any part thereof, from the City of Sapulpa to the City of Tulsa, and that they be further restrained from doing any act having for its purpose to prevent the changing of the run of any of plaintiff's passenger trains so that the crews thereon may change at the City of Tulsa, instead of the City of Sapulpa, or from doing any act which has for its purpose the prevention of said plaintiff from removing its shops or division point from the City of Sapulpa to the City of Tulsa, or from doing any act which has for its purpose the prevention of said plaintiff from retaining its said shops or division point, or any part of either of them, at the City of Tulsa, instead of the City of Sapulpa, or from doing any act which, in any manner, interferes with the plaintiff in maintaining its said shops and its said division point at the City of Tulsa.

Plaintiff further prays that upon final hearing of this cause that said defendants, and all of them, and all persons for whom any of said defendants appear in this cause, and the agents, servants and representatives of said defend-

ants, or any such persons, be permanently enjoined from doing any of said acts as above described.

Plaintiff further prays that it be granted such other relief, either general or special, to which, in good conscience and equity, it may be shown to be entitled in the premises.

E. T. Miller, C. B. Stuart, Cruce & Franklin, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 28] In United States District Court

[Title omitted]

Statement of Evidence Filed March 14, 1928

Caption

Be it remembered that heretofore, to wit, on the 22nd day of October, 1927, before the Honorable Arba S. Van Valkenburgh, Circuit Judge, Honorable Arthur L. Reeves, District Judge, and Honorable F. E. Kenamer, District Judge, the above entitled cause came on for hearing upon the motions filed herein.

Appearances: Messrs. C. B. Stuart and Ben Franklin appeared for the plaintiff; Messrs. C. B. Ames and T. L. Blakemore appeared for defendants Lawrence and Taylor.

Thereupon the following proceedings were had, to wit:

[fol. 29] Colloquy Between Court and Counsel

Judge Van Valkenburgh: It is the understanding of the Court that the case of St. Louis-San Francisco Railway Company against Lawrence stands for final hearing. Are counsel ready in this case?

Mr. Ames: That is not the case. The case is not here for final hearing at all, but is here on two motions, one to require the Railroad Company to make restitution of the wrong that it did under the direction of an erroneous order it had made by this Court, and the other for ascertainment and allowance of damages under the injunction bond because the temporary injunction was wrongfully obtained.

Judge Van Valkenburgh: The Court has had these motions before it and holds that neither of those motions should be considered nor granted until the result of the case on final hearing.

Mr. Ames: Is your Honor going to decide the case without giving us an opportunity to present it?

Judge Van Valkenburgh: On those motions?

Mr. Ames: On the motions we desire to present.

Judge Van Valkenburgh: You may present them, but we have had your motion before us and it is unimportant to the matter of final hearing whether the assessment of damages is heard at this time; furthermore, the Court would not make any order to send the shops back and perhaps go to an unnecessary expense in the matter until it determines whether on final hearing that should be done. This does not foreclose——

[fol. 30] Mr. Ames: We present a motion——

Judge Van Valkenburgh: Just a moment. This does not foreclose any right you have, because the question on final hearing of whether the shops ought to be removed would necessarily settle the question whether it should be sent back now.

Mr. Ames: The matter is not here for final hearing; the defendants are not ready to present it on final hearing, and I take it that the case will not be considered for a year or more.

Judge Van Valkenburgh: Why?

Mr. Ames: Because there are a number of steps which must be taken before this case can be presented finally, under the decision of the Supreme Court of the United States. It is the duty of the Railroad Company to comply with the laws of the United States.

Judge Van Valkenburgh: The Court will hear you on these motions, of course. That is all.

Mr. Ames: The first thing——

Mr. Franklin: We agree with counsel, your Honors, that the case is not up on final hearing at this time.

Judge Van Valkenburgh: You say it is not?

Mr. Franklin: It is not.

Judge Van Valkenburgh: Very well.

Mr. Franklin: There is a motion to dismiss the bill for lack of equity, that I understand Judge Ames will with-

draw. That being true, the issues are not joined. What I [fol. 31] do not agree with the Judge is——

Judge Kennamer: My understanding is that it stands for hearing on your motion.

Mr. Franklin: I understand that he will not present that motion. Judge Ames wrote me to that effect, then the only thing that would follow would be an answer and the matter come up on final hearing.

Judge Van Valkenburgh: Very well, speaking for myself, the Court was not advised that the issues were not made for final hearing at this time. If that is not true, certainly, we will hear the other matters.

Mr. Ames: The first thing we wish to present, if your Honors please, is an objection to this motion being heard by three judges. We wish to file and present, if your Honors please, that motion.

(Thereupon Mr. Ames read to the Court his motion, and after argument and presentation by counsel for both sides, the following proceedings were had:)

Judge Van Valkenburgh: Gentlemen, the Court has given full consideration to the arguments of counsel and has inspected the opinion and we have reached the conclusion that the spirit, purpose, and intent of the law was that after the jurisdiction of the three judges had attached, and they granted the temporary order, that that jurisdiction as to [fol. 32] all matters affecting the substantive relief, or for all relief to be granted, should still remain in a three judge court, and decide the ultimate merits. Our judgment is that this question of restitution is so inseparably and inextricably interwoven here that the ultimate question of whether the permanent injunction should issue or be denied, that a three judge court—when I say three judges I do not necessarily mean the court as at present constituted—cannot refuse to accept the burden and responsibility which the law imposes upon it. For that reason the application that it should be heard to the district judge will be overruled, and jurisdiction of the three judge court will be retained.

Now, as to the other matter of damages, it is the judgment of the Court that that is a matter that has no relationship whatever to the question of whether an ultimate,

permanent injunction shall or shall not be granted. It depends upon what damages have accrued, if any, on account of what the Supreme Court has said to be the improvident issuing of the temporary injunction.

There is no connection whatever with any ultimate relief that can be granted, consequently we believe that that is a matter to be handled by the district court and the district judge at such time and place, and under such circumstances and conditions as he may think appropriate in connection with the other situation of the case.

Now, is there any other matter to come before the judges [fol. 33] sitting as three judges?

Mr. Ames: May it please your Honors, I would like to present a motion addressed to Judge Kennamer only, for the purpose of making our record. I have not prepared it, but if Judge Kennamer will permit it, I will dictate it and it can be transcribed by the reporter and signed and filed as though presented.

Judge Kennamer: Yes, sir.

Judge Van Valkenburgh: Anything will be permitted to let you make any record you desire to review the action of the Court.

Mr. Ames: To the Honorable F. E. Kennamer, United States District Judge: The defendants in said cause respectfully request your Honor, sitting alone, to hear their application for an order of Court requiring the plaintiff in said cause to restore the status quo as in respect of the shops and division point at Sapulpa as it existed on and prior to the date on which the interlocutory injunction was issued by this Court.

Judge Kennamer: I overrule the motion and allow exception.

Mr. Ames: Mr. Reporter, will you write that motion up and attach to the bottom of the motion on the same sheet the following:

The above motion being presented to the Honorable F. E. Kennamer on this date, is overruled.

[fol. 34] Judge Kennamer: Yes, sir, that is all right.

Mr. Ames: Now, may it please your Honors, we wish to present our motion.

Judge Van Valkenburgh: What motion is that?

Mr. Ames: Motion to require restitution.

Judge Van Valkenburgh: I thought you had already presented it.

Mr. Ames: Oh, no, we haven't presented it at all.

Judge Van Valkenburgh: You are presenting it to us?

Judge Kennamer: You mean the motion to restore status quo?

Mr. Ames: Yes, sir.

Judge Van Valkenburgh: You now wish to present that to the Court as now constituted?

Mr. Ames: Yes, sir. If your Honors please, we can save a good deal of time by not reading the affidavits, because there is no controversy. The affidavits show the shops and division point were moved as of January, 1927, and that the Railroad Company has taken no proceedings before the Corporation Commission of any kind since the 1st of January, 1927, and we offer in evidence the affidavit of Mr. E. D. Hicks, Jr., Secretary of Corporation Commission; the affidavit of Mr. C. C. Warren, and the affidavit of Mr. John F. Egan. There being no controversy about the fact, I will not stop to read the affidavits. Counsel for the other side have some affidavits to offer, and we — just as well complete our record of the fact.

[fol. 35] Mr. Franklin: I take it it would be a good idea for us to file our affidavits at this time.

Mr. Ames: Yes.

Judge Kennamer: All right.

Mr. Franklin: We desire to file the affidavit of J. E. Hutchison, Vice-President, in charge of operations of the St. Louis-San Francisco Railway, F. H. Shaffer, General Manager, St. Louis-San Francisco Railway Company, and H. L. Worman, Superintendent of Motive Power, St. Louis-San Francisco Railway Company, which affidavit is joint.

Mr. Ames: Now, with respect to that affidavit, if your Honors please, the defendants object as incompetent and immaterial, except the paragraph reading as follows:

"On or about February 10, 1927, we abandoned Sapulpa terminal, and trains moving east from Oklahoma City and moving north from Sherman, Texas, terminated at West Tulsa, instead of Sapulpa, and trains moving west from Afton, Oklahoma, terminated at West Tulsa, instead of Sapulpa."

We object to the rest as incompetent because it merely shows——

Mr. Franklin: That affidavit shows the saving that the Road has made during the time it has had it shops and terminal point at Tulsa since it has moved. I think the affidavit is competent.

Judge Van Valkenburgh: I assume that the objection will be noted, unless we hear whatever you have to say upon [fol. 36] the matter, then rule upon the proposition.

Mr. Franklin: We also offer the joint affidavit of the same three parties, which affidavit shows the cost that would be incurred if the Road was compelled at this time to move its shop and division point from the City of Tulsa to the City of Sapulpa.

Mr. Ames: We object to that as incompetent, and immaterial.

(The affidavits, so offered by counsel for both sides, are as follows:)

[Title omitted]

AFFIDAVIT OF E. D. HICKS, JR.

STATE OF OKLAHOMA,
Oklahoma County, ss:

E. D. Hicks, Jr. being duly sworn says that he is secretary of the Corporation Commission of the State of Okla- [fol. 37] homa, and that the above named plaintiff has not filed in the office of the Corporation Commission of Oklahoma any application for leave to remove its shops, division point and terminal facilities, or any of them, from the City of Sapulpa, Oklahoma, to West Tulsa, Oklahoma, or to any other place.

Affiant further says that no papers have been filed by the above named plaintiff since the 1st day of January, 1927, in the office of the Corporation Commission in the cause there pending, entitled "J. F. Lawrence, et al., versus St. Louis San Francisco Railway Company, et al., No. 2812.

Further affiant saith not.

E. D. Hicks, Jr. (Seal Corp. Com.)

Subscribed and sworn to before me this 19th day of October, 1927. Jane Callagy, Notary Public. My commission expires Aug. 9, 1931. (Seal.)

[fol. 38] AFFIDAVIT OF C. C. WARREN

STATE OF OKLAHOMA,
Creek County, ss:

C. C. Warren, being first duly sworn on his oath says: that he is now and has been since the year 1923, a resident of the City of Sapulpa; that for a period of 20 years he was in the service of various railroad companies in the United States; that during said time he has served in the capacity of Yard Master, and is, therefore familiar with the problems of operating a division point of a railroad; that since the establishment of the division point and terminals at Sapulpa, he has been familiar with the general conditions of the St. Louis San Francisco shops, yards and terminal facilities in the City of Sapulpa.

Affiant further states that in January of the year 1927, the St. Louis San Francisco Railway Company was maintaining in its yards at Sapulpa an eighteen stall roundhouse, and all equipment and machinery necessary to its operation, together with blacksmith and machine shops, with all necessary machinery and equipment for the purpose of repairing locomotives; and that said company was employing about 50 men in the operation of said round house, blacksmith and machine shops.

Affiant further states that at such time the St. Louis San Francisco Railway Company was maintaining in its yards at Sapulpa a Bridge and Building Department and has located in its yards machinery and equipment for cutting [fol. 39] timber for bridges and other railroad building equipment, in which department it employed regularly about 20 men.

Affiant further states that in January of the year 1927, Railway Company was also maintaining at such time at said terminal in said yards a Car Department and had located there a carpenter shop or machine shop, and that the same was fully equipped with all machinery necessary to the operation of said shop and that in such car department it had in its employ about 100 men.

Affiant further states that said St. Louis-San Francisco Railway Company maintained at such time in Sapulpa a large Freight Depot, at which it employed about 40 men.

Affiant further states that said St. Louis-San Francisco Railway Company operated five switch engine crews in its yards at Sapulpa; and employed about 60 men in the operation of its switch engines at said division point.

Affiant further states that said Company, at such time, employed about 20 men in its road and maintenance department at Sapulpa.

Affiant further states that said St. Louis-San Francisco Railway Company at such time had in its employ about 80 men who were engaged in the Freight Road Service of said company; that said men operated out of Sapulpa as a division point, and that there were also about 16 men engaged in the Passenger Road Service of said company, operating out of Sapulpa as a division point.

[fol. 40] Affiant further states that all of the employes in the various departments, mentioned above, during the month of January, 1927, were making their homes in Sapulpa, most of whom had resided in Sapulpa and had made their homes in said City for many years prior thereto.

Affiant further states that at such time the said St. Louis-San Francisco Railway Company maintained about 24 side tracks in its yards at Sapulpa with a capacity of about 1500 cars, and that it also maintained at Sapulpa a large stock pen for the accommodation of live stock transported by said St. Louis-San Francisco Railway Company.

Affiant further states that on or about the 10th day of February, 1927, said St. Louis-San Francisco Railway Company removed its division and terminal point from Sapulpa, Oklahoma, to West Tulsa, Oklahoma, and removed from said yards all machinery and equipment from said roundhouse, machine shops and carpenter shops; that said St. Louis-San Francisco Railway Company has also removed three tracks from its yards in Sapulpa; it has removed also all of its stock pens, which it formerly maintained at Sapulpa, except two small pens; that it has also removed two large water tanks from which engines at said yards were supplied; that it has removed the buildings in which the carpenter shops were maintained; that it has removed practically all materials and supplies for repairs of all

kinds and buildings, and in fact has literally stripped said yards and buildings of all equipment and facilities which [fol. 41] are necessary to maintaining and operating the various branches of its service, mentioned above.

Affiant further states that in making the change of said terminal from Sapulpa, Oklahoma, to West Tulsa, Oklahoma, that the said St. Louis San Francisco Railway Company has compelled practically all of the men in the various departments mentioned above to report for employment in West Tulsa, and only a very few of said employees are now employed by said company at Sapulpa; and that said company is at this time in no sense maintaining a division point at Sapulpa; but that it has been since the 10th of February, 1927, running all of its trains, both passenger and freight, in and out of West Tulsa as a division point.

C. C. Warren.

Subscribed and sworn to before me on this the 2 day of July, 1927. Sylvia Arnett, Notary Public. My commission expires January 31, 1929. (Seal.)

[fol. 42] AFFIDAVIT OF JOHN F. EGAN

STATE OF OKLAHOMA,
Creek County, ss:

John F. Egan, being first duly sworn upon his oath states:

That he is now and has been for the past 20 years, a resident of the City of Sapulpa, Oklahoma; that on or about the 10th day of February, 1927, the St. Louis San Francisco Railway Company removed its division and terminal point from Sapulpa, Oklahoma, to West Tulsa, Oklahoma, and removed from said yards all machinery and equipment from its roundhouse, machine shops and carpenter shops; that said St. Louis San Francisco Railway Company has also removed three tracks from its yards in Sapulpa; that it has removed also all of its stock pens, which it formerly maintained at Sapulpa, except two small pens; that it has also removed two large water tanks from which engines at said yards were supplied; that it has removed the buildings in which the carpenter shops were maintained; that it has removed practically all materials and supplies for

repair of all kinds and buildings, and in fact has literally stripped said yards and buildings of all equipment and facilities which are necessary to maintaining and operating the various branches of its service at said division and terminal.

Affiant further states that in making the change of said terminal from Sapulpa, Oklahoma, to West Tulsa, Oklahoma, that the said St. Louis San Francisco Railway Com-
[fol. 43] pany has compelled practically all of the men in the various departments mentioned above to report for employment in West Tulsa, and only a very few of said employees are now employed by said company at Sapulpa; and that said company is at this time in no sense maintaining a division point at Sapulpa, but that it has been since the 10th day of February, 1927, running all of its trains, both passenger and freight, in and out of West Tulsa as a division point.

John F. Egan.

Subscribed and sworn to before me on this the 9 day of July, 1927. Sylvia Arnett, Notary Public. My commission expires January 31, 1929. (Seal.)

[fol. 44] [Title omitted]

AFFIDAVIT OF J. E. HUTCHISON, F. H. SHAFFER, AND H. L. WORMAN

Before me the undersigned authority personally appeared J. E. Hutchison, Vice-President in Charge of Operation, St. Louis San Francisco Railway Company; F. H. Shaffer, General Manager, St. Louis San Francisco Railway Company; H. L. Worman, Superintendent of Motive Power, St. Louis San Francisco Railway Company, who, after being sworn, depose and say:

On or about February 10, 1927, we abandoned Sapulpa terminal, and trains moving east from Oklahoma City and moving north from Sherman, Texas, terminated at West Tulsa, instead of Sapulpa, and trains moving west from Afton, Oklahoma, terminated at West Tulsa, instead of Sapulpa.

[fol. 45] The elimination of Sapulpa terminal has resulted in a considerable saving in expenses. Within the past few

days we have had our forces work up under our directions figures from the records of the company, showing the reductions in the various items, and this saving amounts to $33,535.17 per month, or a yearly saving of $402,422.04. These figures are very conservative. There are many items which it is difficult to reduce to a money basis, the major reductions being in the Mechanical Department, per diem, wages, fuel, and other expenses incidental to transportation.

In making this saving, we have not in any way impaired the service at Sapulpa. On the other hand, we have greatly improved our service at Tulsa. It should be further remembered that this saving has been effected with a substantial increase in business handled at Tulsa over last year.

In addition to the above saving, we have also accomplished a saving of approximately one thousand dollars per month, or twelve thousand dollars per year, in the maintenance of buildings. That is, we are required to maintain shop buildings only at West Tulsa, whereas previously we maintained them at both Sapulpa and West Tulsa.

Our present operation permits of building in Tulsa terminal solid thru freight trains for Kansas City and for St. Louis, resulting in a very much improved service, with a decrease in cost. It also affords very much better service for points west and south of Sapulpa, by reason of the fact [fol. 46] that thru trains are built up solid in West Tulsa terminal, and it is not necessary to set out the entire train at Sapulpa, switch and change crews, as prior to February 10th. Neither is it necessary to do this on business destined east of Sapulpa, such trains now running thru to West Tulsa where there is an opportunity to make them up promptly and dispatch without delay.

By reason of the changed operating condition, we have been able to maintain a much more reliable movement of thru freight between St. Louis and Oklahoma and between Texas and St. Louis than we did when Sapulpa terminal was in operation. On account of the lack of yard room in Sapulpa terminal we were continually confronted with a congestion, trains being held out of that terminal an excessive length of time, which resulted in a high operating cost, to say nothing of the delay to the traffic.

By reason of the improved operating conditions, we are now running our freight engines in many cases thru be-

tween Kansas City and Sherman, Texas, between Oklahoma City and Monett, Missouri, and between Oklahoma City and Kansas City. We could not do this under the old arrangement of having Sapulpa as a terminal for the reason that the water at Sapulpa was very bad, required very heavy treatment, and the engines could not maintain these long runs on account of the action of the bad water on the boilers.

J. E. Hutchison, F. H. Shaffer, H. L. Worman.

[fol. 47] Subscribed and sworn to before me this 22nd day of October, 1927. R. H. Powell, Notary Public. My commission expires November 13, 1930. (Seal.)

[Title omitted]

AFFIDAVIT OF J. E. HUTCHISON, F. H. SHAFFER, AND H. L. WORMAN

Before me the undersigned authority personally appeared J. E. Hutchison, Vice President in Charge of Operation, St. Louis-San Francisco Railway Company; F. H. Shaffer, General Manager, St. Louis-San Francisco Rail-
[fol. 48] way Company; H. L. Worman, Superintendent of Motive Power, St. Louis-San Francisco Railway Company, who, after being sworn, depose and say:

If ordered to re-establish Sapulpa Terminal, the mechanical facilities and track arrangements would require an expenditure of approximately three hundred thousand dollars; and even with this expenditure we would not have adequate facilities to render efficient service, such as we are now rendering under the present arrangement of operating our trains out of West Tulsa.

It must be remembered that this three hundred thousand dollars required to re-establish Sapulpa as a terminal does not take into consideration the increased cost of operation by reason of the terminal being inadequate to properly handle our business, neither does it take into consideration the cost of purchasing additional power that is not now necessary by reason of running our power through. Going back to the congested condition we had when operating the

terminal at Sapulpa would mean the purchase of twenty or twenty-five Mikado type engines at a cost of approximately two million dollars.

To give us adequate facilities at Sapulpa to handle our business economically, we would have to abandon entirely the old location and go to the other side of town and build entirely new facilities at an approximate cost of $3,000,000; and then we would not have water fit for steam-making purposes.

[fol. 49] We have been able to make a tremendous saving in repairs to locomotive boilers and other parts of locomotives by reason of getting good boiler water at Tulsa. We are not troubled with flues and fireboxes leaking as we were while operating out of Sapulpa; this on account of the better water condition at Tulsa.

Furthermore, Sapulpa is not the economical point from which to operate our trains, due to the enormous amount of business which originates in the Tulsa district.

By disarranging our organization at Tulsa and moving back to Sapulpa we would not only disarrange the service at Tulsa and Sapulpa, but we would handicap the flow of traffic over practically the entire railroad, by reason of interfering with the manner in which our power is now being run through our terminals.

It is very difficult to arrive at the net saving made since abandoning Sapulpa as a terminal, by reason of the fact that since abandoning Sapulpa we have been able to run power over three, four and five divisions, and the work on a locomotive instead of being taken care of at one or two terminals is now running over practically the entire railroad, which results in a tremendous reduction in capital invested in power.

The old location at Sapulpa made it very difficult to operate that terminal successfully, due to the heavy grade on which the trains were handled, and in the above men[fol. 50] tioned expenditure of $3,000,000, of course, the grade would have been relieved around the town from the present location to the new facilities. We could not hope to operate in the old location without a very heavy increased cost in the entire operation.

Our patrons have called attention to the improved service since the abandonment of Sapulpa and since operating

out of Tulsa, and we think that the improved service has brought about considerable increase in our business into and out of the Tulsa district; and were we ordered to go back to Sapulpa and operate under the old conditions there is no question but that we would lose considerable traffic that we are now enjoying.

The actual expense of $301,000.00 which the company would incur if compelled to remove to Sapulpa at this time, as above set forth, consists of the following items:

Power plant (complete)	$40,000
Machinery	97,000
Boiler washing plant	5,000
Mill, shop and machinery	40,000
Oil pump facilities	21,000
Store department	2,500
Yard tracks	26,000
Other miscellaneous items and expenses	69,000
Total	301,500

Affiants further say that the actual expense incurred by [fol. 51] the company in moving the shops and division point from Sapulpa to Tulsa, as above described, has been not less than $150,000.00.

J. E. Hutchinson, F. H. Shaffer, H. L. Worman.

Subscribed and sworn to before me this 22nd day of October, 1927. E. H. Powell, Notary Public. My commission expires Nov. 13, 1930. (Seal.)

[fol. 52] Colloquy Between Court and Counsel

Judge Van Valkenburgh: Mr. Amos, it seems pertinent to inquire what you conceive the procedure should be at this stage. With respect to the final hearing, what is the procedure that you outline?

Mr. Amos: I think this Court cannot take this case up for final hearing until the Railroad Company has complied with the statute and sought the relief at the hands of the Corporation Commission and been denied that relief.

Judge Van Valkenburgh: Now, then, you made a remark this morning, and, of course, I say the Court is interested in it because it has some responsibility in it, with respect to the final hearing, and that is that it would be two years at least before this case would be ready for final hearing. What was your meaning when you said that?

Mr. Ames: My meaning is this, I say this Court has no right to conduct a final hearing in this case until the Railroad Company has complied with the Oklahoma statute, by proceeding before the Corporation Commission in a proper way.

Judge Van Valkenburgh: Very well, what connection has that with the length of time, which is, of course, a serious consideration?

Mr. Ames: I was using that by way of illustration. I do not know — long it will take.

Judge Van Valkenburgh: Assume they should reply, do you think it would take such a length of time to do that?

Mr. Ames: I imagine it would take at least a year to try [fol. 32] the case before the Commission and the Supreme Court of the State, to which appeal will probably be taken by one side or the other.

Judge Van Valkenburgh: The Supreme Court of the State?

Mr. Ames: Yes, sir.

Judge Van Valkenburgh: That was not necessarily contemplated by the Supreme Court of the United States' opinion, was it?

Mr. Ames: Well, not at all. Suppose the Corporation Commission, for instance, should decide they have a right to move.

Judge Van Valkenburgh: Yes.

Mr. Ames: We have a right to appeal to the Supreme Court of the State.

Judge Van Valkenburgh: I see your proposition.

Mr. Ames: If the Corporation Commission decides against the Railroad, it has a right to appeal to the Supreme Court of the State. The proceedings in the State court would probably be exhausted before it comes back to this Court, and it would probably take a year to do that; so that I assume there will be no final hearing until there is a final hearing in the Supreme Court. There may never

be a hearing here. They may be allowed to move. The Corporation Commission is not making this motion; it is being made by the Attorney General and the citizens of Sapulpa.

Judge Van Valkenburgh: The Corporation Commission [fol. 54] participated in the original hearing, I understand.

Mr. Ames: The Attorney General is appearing for it to that extent. Naturally, they will not say the act of the legislature is unconstitutional, because it is not a court with that power.

Mr. Stuart: If we should go before the Corporation Commission and they should make an order that we have no right to move, do you mean to say we could not come before this court?

Mr. Ames: No, I did not say anything like that. You can do as you please. We will present our views at the proper time. What I was saying is, there is a right of appeal. If they lose and do not exercise it, that is a matter for them to determine. If we lose, we have a right to exercise it.

(Thereupon counsel presented at length the matters before the Court, after which the following proceedings were had:)

Judge Van Valkenburgh: Well, gentlemen, this case has reached the stage where it presents unusual embarrassments. This Court feels very keenly the fact that its proper attitude, and the attitude of counsel at the former hearing, was not placed before the Supreme Court, either in the form of a decree or in the matter of the reasons stated by the Court for arriving at its conclusion. In the examination of the record entry, which is recited in the mandate of the Supreme Court, I find that there is no find- [fol. 55] ing as to irreparable injury, or as to the constitutionality or unconstitutionality of the statute, or of any action that was taken or contemplated by the Commission in derogation of the constitutional rights of the petitioner, even though the statute were constitutional. Then through the unfortunate circumstance that we have spoken of, the absence of the stenographer at the time the Court announced its conclusion, there was before the Supreme Court no statement whatever as to the ground upon which this

Court based its conclusion, except what must be derived from the issues presented by the petition and the hearing. The Supreme Court felt that this Court was premature and hasty in its action in not awaiting whatever comity, and what it deemed to be proper consideration, of the authorities of the State, until the short time had elapsed in which the Commission might have passed upon the question. Of course it was in the mind of the Court at the time, as it is now, and as it is indicated by counsel in response to questions of the Court, that the consideration of that question before the Commission would have taken some time and would not have been resolved on the 17th of January, nor any other date within any proximity to that, but be that as it may, this Court very cheerfully recognizes that there were some shortcomings in the procedure of this court on temporary hearing, and that it might very well, without what was then indicated to be upon the face of the record as irreparable injury, have indulged until recognition of the probability that the State authorities might be consulted [fol. 56] and would decide correctly before entering its order. There is nothing that this Court more cheerfully recognizes than the paramount authorities of the Supreme Court and the undoubted justice of their reasoning in that respect. So far we are constrained to feel that most of what was said had to do with the proprieties existing in matters of temporary hearings. We cannot accede to the proposition that the Supreme Court has foreclosed or outlined any decision as to the ultimate authority to be exercised in a matter of this sort. This is not the proper place to decide what is the opinion of this Court, because the Court had very decided views at that time, based upon what was before it, as justifying the temporary order. It never would have occurred to the Court to have made the order it did, or sought to make, but it was imperfectly stated due to the fact that it was not properly inspected by the Court, unless it had been a matter of common consent as the Court understood it on the part of counsel on both sides, that the desire was to get a speedy ruling of this Court upon the paramount authority to order or permit the removal of these shops. We think, as the Supreme Court says in this opinion, that undoubtedly the federal authority is para-

mount. Now the question is how much of circuity should be indulged in in the general opinion of both parties to the litigation, and of society, the state, and the nation, in the matter of interstate roads. Of course, with respect to the interstate train schedule, the opinion of the Supreme Court seems [fol. 57] clearly to indicate that with respect thereto, even the State Commission would never withhold its permission to install that schedule, but it is, perhaps, without avail to go further into analysis of the Supreme Court decision, except to say that in our judgment there is nothing of finality in it with respect to the procedure now, but inasmuch as they have so plainly indicated their desire to adhere to the mandate of the state law where that can be done without irreparable damage, injury, and sacrifice, we feel that we shall say now that the petitioner in this case, the Railroad Company, as a preliminary step toward further hearing of this case, shall apply to the Commission to dissolve its restraining order and to ratify the action of the Road in removing the shops, and that this case will not be put to final hearing until that is done. We wish also to say that the matters that have been presented by counsel today with respect to the matter of restitution, to our minds, raise a grave question as to the practical application of the doctrine in justice to all parties, taking into consideration the travelling public and the shipping public, as well as the parties. We think that that is a matter of such serious consideration that we ought not to announce a hasty decision on it, but we want to read these authorities cited. They have been, of course, read to us more or less in detail, but we want ourselves to examine into the facts and circumstances and conditions of the cases to see what distinctions, if any, existed. Therefore, we shall withhold our decision on that point until we have had an opportunity for [fol. 58] examination, but we wish to say this, that we must insist upon a prompt and speedy application to the Commission on the part of the Railway Company in the manner we have indicated, and that that action on their part, will, of course, be taken into consideration by us in passing upon this question of what ought to be done in the premises, in view of the decision of the Supreme Court and the present situation of affairs. I think there is nothing further to do at this time, except to have the order

drafted whereby the Road shall apply, as I have stated, to the Commission to get its order. In that way we shall, I think, follow out even to the letter the opinion of the Supreme Court. We do not want to appear in any respect as being in a position of controversy with that court.

Mr. Stuart: I have to say this, your Honors, that the Railway Company has no objection whatever to that procedure. We were in doubt ourselves, in an attempt to analyze that procedure, whether this court should retain jurisdiction and go to final judgment or whether we should go there and then come up here to rectify any wrong the Commission might do. We are perfectly willing to go there, and will go there. Judge Ames, will you go with us on a speedy action in that matter?

Mr. Ames: I reserve our action in that matter to ourselves.

Mr. Franklin: There you are.

Mr. Ames: In view of the Court's remarks, I wish to [fol. 59] make one statement for the record. Your Honor said counsel for both sides, at the hearing, indicated the desire for a speedy decision on the constitutionality question. My recollection is that so far as counsel for the defendants are concerned, they indicated a speedy desire for a review by the Supreme Court of the United States, and not a speedy desire for a decision on the constitutionality question in this court, but so far as this court was concerned were resisting the application for temporary injunction in every way they knew how.

Judge Van Valkenburgh: You mean to say that is your side was?

Mr. Ames: Yes, sir.

Judge Van Valkenburgh: I understand, but isn't that the real question of issue?

Mr. Ames: Yes, sir, we debated that. With reference to the form of the decree, I wish to assume no responsibility whatever for the form of that decree.

Judge Van Valkenburgh: I have not placed that. I think perhaps the court itself, which is so much in the habit of taking for granted the word of able counsel, will look after that.

Mr. Ames: Your Honor will recall——

Mr. Stuart: We will assume the responsibility.

Mr. Ames: The Supreme Court of the United States has criticized that decree. The decree was drafted by counsel for the plaintiff and was brought to Judge Kennamer's [fol. 60] chambers, where the Court and counsel for the defendants were waiting for it quite a while. It was never submitted to counsel for the defendants until submitted to the Court at the same time; so that we simply want the record to show we do not feel any responsibility at all for the mistakes in that decree.

Judge Van Valkenburgh: Oh, well, I don't think whatever may be the future of this case, that counsel will be held to be responsible. However, the responsibility for the Court's decree will rest with the Court.

Mr. Franklin: At this time, if the Court please, it may be this ought to be addressed to Judge Kennamer alone, I want to ask permission of the Court to file an amendment to the complaint. It is merely an amendment to the prayer, which is simply broadening the prayer and asking for general relief. The United States Supreme Court pointed out——

Judge Van Valkenburgh: If that should be done at all, it seems to me that is a matter that is entirely addressed to the Court now. As it has taken jurisdiction of the pleadings now, I think the amendment should be addressed to this Court.

Mr. Franklin: I will ask permission of the Court at this time to file this amendment. I have furnished Judge Ames with a copy.

Judge Van Valkenburgh: Very well.

Mr. Stuart: We desire also, if the Court please, that the affidavits we have filed today shall go to the Court and receive the attention of the Court with reference to this [fol. 61] matter of restitution.

Judge Van Valkenburgh: On both sides?

Mr. Stuart: Yes, sir, on both sides.

Judge Van Valkenburgh: Very well.

Mr. Stuart: And, your Honors, we would like for it to be understood this Court, as I understand it now, is still retaining jurisdiction of this controversy, and it is simply held in abeyance until we make the application to the Corporation Commission to get their judgment, so that if we desire to go against it we can come to this court.

Judge Van Valkenburgh: This court still retains jurisdiction.

Mr. Stuart: And that therefore will remain as it is until further order of the Court?

Judge Van Valkenburgh: Yes.

Mr. Franklin: In that connection does the Court desire us to draw a journal entry to that effect and have your Honors to sign it before you leave?

Judge Van Valkenburgh: I think that should be done.

Mr. Ames: I did not get that.

Mr. Franklin: I asked if they desired we draw a journal entry covering that feature and have them sign it.

Mr. Ames: I don't think your Honors can do it before you leave today. It is now five o'clock.

Judge Van Valkenburgh: While we are all together we want to dispose of that proposition. I will say this, that [fol. 62] if counsel will agree that the matter be drawn and submitted to counsel, then submitted to us individually to be signed by Judge Kennamer when we all three sign it, that is agreeable.

Mr. Ames: That is agreeable.

Mr. Franklin: That is satisfactory.

Judge Van Valkenburgh: That may be done.

Judge Kennamer: On the matter of restitution, that will be denied.

Mr. Ames: You are not denying the order of restitution?

Judge Kennamer: No, sir, on the one asking me to pass on it.

Mr. Ames: Yes.

Judge Van Valkenburgh: If you will prepare that and send it to me at Kansas City first, and give a copy also to Judge Reeves and Judge Kennamer, they will be here, they can then forward me their views upon the order, and I will also inspect the order. I would like to have it submitted to Mr. Ames so that he may also contemporaneously advise the Court what he thinks of it.

Mr. Ames: I would like to have a transcript of your Honor's remarks before the order is drafted.

Judge Van Valkenburgh: Very well, and before that I would also like to have a copy of what we said submitted to me, Mr. Reporter, so that I may see if I have inadvertently overlooked anything.

[fol. 63] Judge Kennamer: Judge Ames, on this matter of assessing damages, do you want an oral hearing?

Mr. Ames: Yes, sir, we would like to have a hearing as soon as it is convenient.

Which were all the proceedings had at the hearing of said cause.

[fol. 64] Clerk's certificate to foregoing omitted in printing.

[File endorsement omitted.]

[fol. 65] In United States District Court

[Title omitted]

Order Directing Plaintiff to Make Application to the Corporation Commission of the State of Oklahoma to Dissolve Restraining Order—Filed Oct. 22, 1927

Now on this 22nd day of October, 1927, the above matter being regularly before the court, and the plaintiff appearing by its attorneys, E. T. Miller, C. B. Stuart and Cruce & Franklin, and the defendants appearing by their attorneys, C. B. Ames and T. L. Blakemore, and the court having heard the argument and contention of counsel for both plaintiff and defendants, and having considered the opinion of the Supreme Court of the United States rendered in this case, is of the opinion that before further steps looking to a final hearing of this cause are taken, that said plaintiff should make application to the Corporation Commission of the State of Oklahoma, to dissolve its restraining orders heretofore made, restraining said plaintiff from removing its shops and division point from the City of Sapulpa to the City of Tulsa, and to ratify the action of said road in removing its said shops and division point during the pendency of this cause, and it further appearing to the court that the United States Supreme Court in its opinion rendered [fol. 66] in this cause, has plainly indicated that it is its desire to adhere to the mandate of the state law wherever that can be done without irreparable damage, injury or sacrifice and it further appearing to this court that application as directed herein may be made to the Corporation

Commission of the State of Oklahoma, by plaintiff, without its surrendering any of its alleged rights prayed for in its complaint filed herein, and that the application hereinafter directed may be made by said plaintiff without this court surrendering its jurisdiction of this cause;

It is, therefore, ordered that plaintiff, as a preliminary step to further hearing of this cause, and without unnecessary delay, and in good faith, make application to the Corporation Commission of the State of Oklahoma, to dissolve its restraining orders heretofore made by it, restraining said plaintiff from removing its shops and division point, or any part thereof, from the City of Sapulpa to the City of Tulsa, and to ratify the action of said plaintiff in the removal of its said shops and division point from the City of Sapulpa to the City of Tulsa, which has been effected during the pendency of this cause in this court.

It is further ordered that unless otherwise ordered by this Court, final hearing of this cause be suspended until the result of said application to the Corporation Commission be ascertained, and it is further ordered that this court shall and will retain jurisdiction of this cause so that any action, order or judgment may be taken or made by this court that may be necessary to protect the rights of any parties hereto.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. F. E. Kennamer, District Judge.

O. K. Cruce & Franklin, Attorneys for Plaintiff. C. B. Ames, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 67] In United States District Court

[Title omitted]

Before Arba S. Van Valkenburgh, U. S. Circuit Judge; Albert L. Reeves, U. S. District Judge; Franklin E. Kennamer, U. S. District Judge

Opinion—Filed Nov. 28, 1927

[fol. 68] Per Curiam:

This action was instituted by the St. Louis San Francisco Railway Company on January 11, 1927, against J. F. Law-

rence and C. C. Taylor, citizens of the city of Sapulpa, Oklahoma, the Corporation Commission of Oklahoma, and the State's Attorney General. Upon the filing of a verified bill of complaint setting forth facts hereinafter detailed, and in accordance with the allegations and prayer of the bill, a temporary restraining order was issued, returnable on the 19th of January, 1927. It was provided in the restraining order that complainant was to take no action in the premises pending a hearing on the application for the temporary injunction. A copy of this order was duly served upon the defendants.

The bill alleged in substance that the plaintiff was a corporation organized under the laws of the State of Missouri, as a railway company engaged in both intrastate and interstate commerce, operating in the States of Missouri, Kansas, Arkansas, Oklahoma, Texas, Mississippi and other states; that during the month of February, 1917, defendants J. F. Lawrence and C. C. Taylor, appearing on behalf of the Chamber of Commerce of Sapulpa and the citizens of said city, filed a complaint with the Corporation Commission of Oklahoma to prevent the plaintiff railway company from moving its shops and division point from the city of Sapulpa to the City of Tulsa; that the Commission, by order Number 1232, temporarily restrained plaintiff from moving its shops or division point on February 15th, 1917, as sought in said complaint; that upon an application of defendants Lawrence and Taylor filed on December 29th, 1926, the Corporation Commission made and caused to be served upon plaintiff, the following order:

[fol. 69] "This cause coming on to be heard on this 29th day of December, 1926, upon motion of the complainants, and it appearing that the defendant is taking steps toward the removal of its shops and division point from the City of Sapulpa in violation of the order of this Commission entered on the 5th day of February, 1917, and in violation of the Act of the Legislature passed in 1917, it is ordered by the Commission that said cause be set down for hearing on the 17th day of January, 1927, and that in the meantime, and until the further order of the Commission, the defendant be, and it is hereby prohibited from moving its shops or division point from the City of Sapulpa, from changing the runs of either its passenger or freight trains,

or from taking any other steps towards changing its division point for either passenger or freight service from the said City of Sapulpa."

The provisions of the Oklahoma Statute relied upon for the jurisdiction of the Corporation Commission were set forth, as follows:

"Compiled Oklahoma Statutes, 1921

"3482. Removal—Permit.—That no person, receiver, firm, company or corporation owning, operating or managing any line of steam railroad in this State shall be allowed to remove railroad shops or division points which have been located at any place in this State for a period of not less than five years without previously securing the permission of the Corporation Commission to make such removal.

"3483. Corporation Commission—Jurisdiction.—If, and when any such person, receiver, firm, company or corporation desires to remove any such railroad shops or division point described in Section One of this Act, it shall be his duty to file an application with the Corporation Commission setting forth the present location of such shops or division point and the reasons for such removal, and thereupon the Corporation Commission shall have full power and jurisdiction to entertain such complaint, but before hearing the same or making any order permitting such removal to be made, said cause shall be set down for hearing, not less than ten days' notice shall be given the city, town or village in which or at which such shops or division point have been maintained, and after giving all parties interested a full and complete hearing in the premises the Commission may in its discretion permit or refuse such request for a removal.

"3484. Hearing—Before a Corporation Commission.—When an application is filed before the Commission for the removal of terminals or car shops, as provided in Section Two, the Commission shall hear evidence on the relative efficiency and expense of handling traffic through the proposed terminal as compared with the present facilities, and shall consider all other facts and circumstances affecting

the various interests involved. In determining the adequacy of the present facilities the Commission shall consider the same increased by an expenditure equal to an amount necessary to remove the same to the proposed location or an amount equal to the necessary expenditure to establish such facilities at the new location. It is hereby further provided that the Commission shall hear evidence and shall make a finding of fact as to the sanitary and habitable conditions of the proposed location of said terminal facilities would endanger or injuriously affect the health of the employees of said applicant or their families, the [fol. 70] Commission shall deny said application and order the said terminal facilities and car shops to remain at the present location.

"3485. Proof—Burden Upon Applicant.—On any such hearing, as provided in this act, the presumption shall be against the removal, and the burden of proof rest upon the applicant to show that such removal ought to be made.

"5548. Transportation Companies Must Maintain Repair Shops in State.—Transportation companies operating within this State which now have in existence round-houses or machine shops for the repairing of locomotives, engines and cars, or which may hereafter establish such round-houses or machine shops for such purpose, shall hereafter maintain such shops and round-houses with sufficient equipment and employees to keep in proper repair all rolling stock, locomotives, engines, and cars used within this State in the transportation of passengers and freight and such transportation companies shall hereafter cause all such rolling stock, locomotives, engines and cars to be repaired at such shops or round-houses and kept in a safe and serviceable condition and no such repair shall be done outside the State of Oklahoma, if such repairs can be done at such company's shops within this State."

The bill charges that these statutory provisions are unconstitutional and that the Corporation Commission was without power to act under such statutes for the reason that they are not a proper exercise of the police power of the state. That they deprive plaintiff of due process of law, and the equal protection of the law; that they are arbitrary, unreasonable and unnecessary; that said statutes were

enacted to serve local interests, and purport to grant to the Corporation Commission authority to regulate interstate commerce. It is then alleged that the shops were located at Sapulpa more than thirty years ago when that city was the terminus of the line; that the lines have been extended into Oklahoma and Texas; that by reason of the growth of Tulsa and its attendant increase of business, it has become the center of plaintiff's operations; that Sapulpa has ceased to be the center of its operations and that it is necessary to remove its shops to Tulsa.

It is further alleged that it is impossible to construct shops sufficient to care for the repairs and business of plaintiff at Sapulpa and that plaintiff has established shops at Tulsa, and that interstate commerce will be aided by a consolidation of the two shops, which are eighteen miles apart. Plaintiff also alleges that the enforcement of the [fol. 71] order of the Corporation Commission would prevent the putting into effect of its schedule regulating its interstate trains, as well as interfere with the management and operation of plaintiff's interstate commerce business to such an extent as to cause plaintiff great immediate and irreparable damage. It was then alleged that plaintiff was without remedy at common law, and prayed for an injunction to avoid a submission to the jurisdiction of the Corporation Commission. A preliminary injunction was sought in order that plaintiff may not suffer irreparable damage and injury.

In response to the order served upon defendants, for a hearing upon the application for a preliminary injunction, plaintiff and defendants appeared and announced ready, presented their evidence in the form of affidavits and argued the cause at great length, on the date provided in the order, to wit: January 19, 1927.

In accordance with the provision of Sec. 266 of the Judicial Code (37 Stat. at large 1013, Chap. 161; Comp. Stat. Sec. 1243; 5th Fed. Annotated Stat. 2d Ed. page 984), the application for a temporary injunction was heard by Van Valkenburgh, Circuit Judge, and Reeves and Kennamer, District Judges. Upon the conclusion of the hearing, and upon the proof adduced it was determined by the Court that the Oklahoma Statute as construed by the Corporation Commission constituted a direct interference with

interstate commerce. The Court entertained the opinion that the statutes were not fair, reasonable or proper exercises of the police power of the State, but were unnecessary and an arbitrary interference with and restriction upon the rights of plaintiff to adjust its business to the rapidly changing conditions in the handling of interstate freight and passengers.

We were convinced from the facts established during the hearing and the arguments and authorities submitted that the statute involved was probably unconstitutional, and that the railroad company should not be compelled to maintain [fol. 72] two shops which were proved to be heavy burdens upon interstate commerce. Without finally determining the constitutionality of the statute, we concluded, from the showing made, that plaintiff was entitled to the temporary relief which it sought.

The evidence presented by plaintiff in support of the allegations of its bill as to the burdens caused by maintaining two sets of shops within a space of eighteen miles, the necessity of maintaining shops at Tulsa because of the growth and development of Tulsa as a shipping center during the past ten years, and the increased cost of operations by reason of the maintenance of two shops and division points was uncontradicted and not seriously controverted.

Upon arriving at the above conclusion respecting the invalidity of the statute considered, it was agreed that Circuit Judge Van Valkenburgh should orally deliver the opinion of the court. This was done in open court, in the presence of all of the parties and their counsel. Thereafter, counsel for the respective parties were requested to prepare proper orders granting the temporary injunction, which was done. The order was presented to the Court in the presence of counsel, and, as no objections had been interposed to its form, it was signed. The court thought that the opinion of Judge Van Valkenburgh had been reduced to writing and incorporated in the record of the case and, therefore, did not require findings in the decree. The first information that the reasons for granting the temporary injunction were not included in the record on appeal was from the opinion handed down in the case by the Honorable Supreme Court of the United States.

Upon the presentation of the journal entry of the decree, counsel for the defendants were afforded an opportunity of superseding and suspending the order pending the appeal by executing a bond. The court was then and there advised that it was not the desire of the defendants to supersede or suspend the decree pending the appeal. [Fol. 73] The Supreme Court of the United States, in passing upon this case, did not determine the constitutionality of the statutes considered, saying: "We have no occasion to determine whether the Oklahoma Act is obnoxious to the Federal Constitution." The Supreme Court concluded that "there was no emergency requiring the issue of an interlocutory injunction" and that the railroad company in contesting with the defendants their rights to remove the shops before the State Corporation Commission would not waive its right to challenge the validity or invalidity of the statute if the Commission decided adversely to its contention in the Federal Court. It was stated by the Supreme Court that "the federal power is paramount." The cause having been remanded to this Court for further proceedings, a motion has been filed and presented by the defendants seeking an order of restitution.

Subsequent to the entering of the temporary injunction and after counsel for defendants had announced that they would not suspend the order of the Court pending the appeal, plaintiff removed its division point and its shops to Red Fork, now a part of the City of Tulsa. It is insisted by counsel for defendants in presenting their motion for an order of restitution that the shops should be returned to Supulpa from Red Fork pending the final determination of the case as the temporary injunction has been set aside on appeal. The following authorities have been submitted as sustaining defendant's contentions:

Northwestern Fuel Co. v. Brock, 139 U. S. 216;
Morris v. Gray, 27 Okla. 696;
Silver Peak Mines v. Hatchett, 93 Fed. 76;
Twenty-One Mining Co. v. Original Sixteen Min., 200 Fed. 106;
Baker v. Bixby, 216 Pac. 628;
Texas Land & L. Co. v. Saunders, 111 S. W. 688;
Atlantic Coast Line Ry. Co. v. Seaboard, etc. R. Co., 71 S. E. 38;
Herrington v. Herrington, 11 Ill. App. 121;
Mangelsen v. Love, 50 Ill. App. 629

An examination of these cases discloses that they are not controlling of the situation presented in the case. The cited cases involved the right to money or property or the [fol. 74] right to possession of property, and in most of them restitution was ordered after final hearing, or where the result could be clearly foreseen at the hearing which determined the right to the property.

Restitution may be ordered where a party violates an injunction which he is seeking. The final determination of this cause can not be foreseen; neither can we say that the plaintiff has taken any undue advantage of the situation. Defendants were afforded an opportunity to suspend the temporary injunction by executing a bond, which they declined to do. It was required that plaintiff execute a bond before it was permitted to remove the shops. This was done; it would be unwise in our opinion to require plaintiff to remove the shops to Sapulpa pending the final determination of the cause. As there is no final decree in the case, and as we are unable to determine the outcome of the matter at this stage of the proceedings, and as the removal of the shops will not deprive defendants of the benefits of their victory, in the event of their prevailing in the case, we do not think restitution is proper. Where the decision on appeal leaves the case undetermined on the merits, and on a final hearing a permanent injunction would be justified, and as in this case, where the decree has been reversed and set aside for error in the matter of procedure, restitution may be denied pending final determination.

In Gould v. McFall, 118 Pa. 445, 12 Atl. 330, 4 Am. St. Rep. 606, it was said:

"Restitution is not a mere right; it is ex gratia, resting in the exercise of a sound discretion, and the Court will not order it where the justice of the case does not call for it. Nor where the process is set aside for a mere slip."

See State ex. Horton, et al., (Neb.) 97 N. W. 434. In Gaffney v. Weeks, 271 U. S. 536, 70 Law. Ed. 1074, the Court said:

[fol. 75] "On an appeal from a temporary injunction it often happens that where there was a balance of convenience and doubt as to the issue, the status quo under the re-

straining order and the restoration should be maintained until a final hearing."

We are of the opinion that nothing can be accomplished, considering and balancing the conveniences in the case, by requiring the plaintiff to remove the shops to Sapulpa pending a final determination of the case. The shops were moved at great expense to the plaintiff, and further great expense will be incurred if the shops are restored; defendants could have prevented the removal by executed a bond, which they declined to do, and as the issues now presented are so doubtful, this court, in the exercise of a sound discretion, should deny restitution. In so ruling, the comparative advantages and disadvantages involved, the conveniences and inconveniences, of the parties hereto, as well as the interests of the shipping public generally, have been fully considered. We think an order of restitution should not be made, if at all, until after final hearing, when the ultimate rights of the parties are established.

In compliance with the directions of the United States Supreme Court, plaintiff has been directed to proceed before the State Corporation Commission for the approval of that body of its acts in removing the shops to Tulsa. In the event of an approval of the removal by the Commission, there will be nothing further for the consideration of this Court, and the controversy will be terminated, unless the order of the Commission is reversed by the State Supreme Court.

In the event of plaintiff's failure to obtain the consent and approval of the Corporation Commission, it may still have the controversy finally determined in the Federal [fol. 76] Courts. This Court is retaining jurisdiction of the parties hereto, although plaintiff is required to proceed before the Commission, and should the matter be ultimately determined in defendants' favor, restitution may be ordered, as well as the payment of all damages sustained by defendants by reason of the removal of the shops.

Motion of defendants for restitution is denied. Plaintiff is ordered to forthwith proceed before the Corporation Commission of Oklahoma.

[File endorsement omitted.]

[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RE MOTION FOR RESTITUTION—Filed Oct. 22, 1927

This cause came on to be heard on the 22nd day of October, 1927, upon the motion of J. F. Lawrence, C. C. Taylor, and Edward Dabney, Attorney General, to require the Plaintiff in said cause to restore the status quo existing at and before the temporary injunction was granted by returning the shops and division point to Sapulpa. The Plaintiff appeared by its attorneys, E. T. Miller, C. B. Stuart and Cruce & Franklin, and the moving defendants appeared by their attorneys, C. B. Ames, T. L. Blakemore, and C. J. Davenport. When the court convened there was sitting Hon. Arba S. Van Valkenburgh, Circuit Judge, Hon. Albert L. Reeves, District Judge, and Hon. F. E. Kennamer, District Judge and the Judge of said Court. Thereupon the moving defendants objected to three judges sitting in said cause, on the groung that their motion to require restitution did not require or permit the presence of three judges under Sec. 380, of the United States Code, or any other provision of Law. Upon this motion being presented and argued it was overruled by the court composed of three judges, as aforesaid. Thereupon, the moving defendants presented an application to the Hon. F. E. Kennamer, Judge of said court, praying that he sit alone and, as Judge of said court, hear their motion, and this motion was overruled by the Hon. F. E. Kennamer, District Judge.

Thereupon, the aforesaid motion to require restitution was presented to the court composed of three judges, and after argument of counsel the court took said motion under [fol. 78] advisement, but retained jurisdiction of said cause.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. F. E. Kennamer, District Judge.

O. K. Cruce & Franklin, Attorneys for Plaintiff. C. B. Ames, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 79] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL COMPLAINT—Filed Jan. 12, 1928

To the Honorable Judges constituting the District Court of the United States for the Northern District of the State of Oklahoma:

Come now the St. Louis-San Francisco Railway Company, plaintiff above named, and permission of this Honorable Court having been first had and obtained, files and presents this its supplemental complaint in said cause.

Plaintiff would respectfully show and call to the attention of the court as a part of its cause of action alleged in its original complaint, and in support thereof, the following matters occurring subsequent to the filing of its original complaint:

I

That on the 19th day of January, 1927, the United States District Court for the Northern District of the State of Oklahoma, consisting of Circuit Judge, the Honorable Arba S. Van Valkenburgh, District Judge, the Honorable Albert L. Reeves, and District Judge, the Honorable Frank [fol. 80] lin E. Kennamer, made and issued, upon the application of this plaintiff, a temporary injunction in said cause, enjoining the above named refendants, and all of them, and all persons similarly situated, and all persons acting with them, their agents, servants and employes, and all persons acting by or under their authority, from prosecuting, hearing, conducting or permitting a hearing to be had, or from taking or permitting any further proceedings to be had in a certain cause then pending before the Corporation Commission of the State of Oklahoma, having for its purpose the prevention of plaintiff from removing its shops and division point from the City of Sapulpa to the City of Tulsa, and further enjoining and restraining said defendants, and all of them, from causing to be made, promulgated or enforced any order in said cause prohibiting plaintiff from removing its said shops or division point, or appurtenances thereto, or from changing the run of any of its trains or crews, and further enjoining said defendants and all of

them from doing anything that would in any manner interfere with, or prohibit plaintiff from removing its shops or any appurtenances thereto, or its division point, or any part thereof, from the City of Sapulpa to the City of Tulsa, or from changing the run of any of its trains or crews so that the same would terminate at the City of Tulsa, instead of the City of Sapulpa; that said order, by its terms, was to become effective upon the filing, by this plaintiff, and the approval thereof by the Clerk of said Court, of a bond, properly conditioned according to law, in the sum of $50,000.00, and was to remain effective until further order of the court. A copy of said order is attached to and made a part of this supplemental complaint, and is hereinafter more specifically referred to; that thereafter in due time plaintiff made and filed its bond in the sum of $50,000.00, as required by said order, with the Clerk of said Court, which said bond was regularly approved by said Clerk.

II

Plaintiff would further show that thereafter and on the [fol. 81] 24th day of January, 1927, defendants presented to said court their petition for appeal, which said petition was in regular form and contained, among other things, the following representation:

"Your petitioners further pray that the proper order touching security be made without superseding the decree referred to, and they tender bond in such sum as the court may require."

That in accordance with said petition, said appeal was prosecuted as provided by law, without the judgment of the District Court granting the temporary restraining order above referred to, being superseded; that during said appeal said restraining order remained in full force and effect and continued in full force and effect until reversed by the Supreme Court of the United States, by reason of said appeal, on the 31st day of May, 1927.

III

That during the pendency of said appeal to the Supreme Court of the United States, and during the time that the judgment of the District Court of the United States for

the Northern District of Oklahoma was in full force and effect and unsuperseded, the plaintiff moved its shops and division point, as described in its original complaint filed herein, from the City of Sepulpa to the City of West Tulsa, and at the time said temporary injunction was vacated, as above described, plaintiff's said shops and division point had been completely moved from the City of Sapulpa to the City of West Tulsa, and were in complete operation at West Tulsa.

IV

Thereafter, and on the 25th day of June, 1927, the above named defendants filed their application with this court for an order requiring this plaintiff to immediately remove its shops and division point from West Tulsa to Sapulpa, and to restore the status quo during the pendency of this suit, so that all parties would be placed in exactly the same position that they would have occupied had the interlocutory [fol. 82] injunction not issued; that on the 22d day of October, 1927, said application on behalf of said defendants came on to be heard before the Honorable Arba S. Van Valkenburgh, Circuit Judge, the Honorable Albert L. Reeves, District Judge, and the Honorable Franklin E. Kennamer, District Judge, sitting as the District Court of the United States in and for the Northern District of Oklahoma, and at said time said matter was fully presented to said court, and at the conclusion of the hearing thereof, and after taking said matter under advisement, said court rendered its written opinion holding among other things that it would be unwise and unnecessary to require this plaintiff to remove its shops and division point from West Tulsa to the City of Sapulpa during the pendency of this cause. Said opinion had the effect of denying defendants' application for the restoration of the status quo during the pendency of said hearing, and permitting plaintiff to retain its said shops and division point at West Tulsa during the pendency of this cause. Said court, in said opinion, among other things, said:

"The final determination of this cause cannot be foreseen; neither can we say that the plaintiff has taken any undue advantage of the situation. Defendants were afforded an opportunity to suspend the temporary injunction by exe-

cuting a bond, which they declined to do. It was required that plaintiff execute a bond before it was permitted to remove the shops. This was done; it would be unwise in our opinion to require plaintiff to remove the shops to Sapulpa pending the final determination of the cause. As there is no final decree in the case, and as we are unable to determine the outcome of the matter at this stage of the proceedings, and as the removal of the shops will not deprive defendants of the benefit of their victory, in the event of their prevailing in the case, we do not think restitution is proper. Where the decision on appeal leaves the case undetermined on the merits, and on a final hearing a permanent injunction would be justified, and, as in this case, where the decree has been reversed and set aside for error in the matter of procedure, restitution may be denied pending final determination. * * *

"We are of the opinion that nothing can be accomplished, considering and balancing the conveniences in the case, by requiring the plaintiff to remove the shops to Sapulpa pending a final determination of the case. The shops were moved at a great expense to the plaintiff, and further great expense will be incurred if the shops are restored; defendants [fol. 83] could have prevented the removal by executing a bond, which they declined to do, and as the issues now presented are so doubtful, this court, in the exercise of a sound discretion, should deny restitution. In so ruling, the comparative advantages and disadvantages involved, the conveniences and inconveniences, of the parties hereto, as well as the interests of the shipping public generally, have been fully considered. We think an order of restitution should not be made, if at all, until after final hearing, when the ultimate rights of the parties are established."

In said opinion said court further directed that in compliance with the directions of the United States Supreme Court, this plaintiff proceed before the Corporation Commission of the State of Oklahoma, by a proper application, for the approval of that body of its acts in removing its shops and division point from Sapulpa to Tulsa, said direction contained in said opinion being as follows:

"In compliance with the directions of the United States Supreme Court, plaintiff has been directed to proceed be-

fore the State Corporation Commission for the approval of that body of its acts in removing the shops to Tulsa. In the event of an approval of the removal by the Commission, there will be nothing further for the consideration of this Court, and the controversy will be terminated, unless the order of the Commission is reversed by the State Supreme Court.

"In the event of plaintiff's failure to obtain the consent and approval of the Corporation Commission, it may still have the controversy finally determined in the Federal Courts. This Court is retaining jurisdiction of the parties hereto, although plaintiff is required to proceed before the Commission, and should the matter be ultimately determined in defendants' favor, restitution may be ordered, as well as the payment of all damages sustained by defendants by reason of the removal of the shops."

In further direction that this plaintiff apply to the Corporation Commission of the State of Oklahoma for approval of its acts in removing said shops and division point from Sapulpa to West Tulsa, said Court, on the said 22d day of October, 1927, made its written order, directing, as a preliminary step to the further hearing of this cause, that this plaintiff, without unnecessary delay and in good faith, make application to the Corporation Commission of the State of Oklahoma to dissolve its restraining orders heretofore made by it, restraining said plaintiff from removing [fol. 84] its shops and division point, or any part thereof, from the City of Sapulpa to the City of Tulsa, and to ratify the action of said plaintiff in the removal of its said shops and division point from the City of Sapulpa to the City of Tulsa, which said removal had been effected during the pendency of this cause in this Court. Both said opinion and said order are on file with the Clerk of this Court, and are both referred to herein, and by reference made a part of this supplemental complaint, the same as if fully set out herein.

V

Plaintiff further shows that in compliance with the court order above referred to, and on the 5th day of November, 1927, plaintiff filed its application before the Corporation

Commission of the State of Oklahoma, asking that said Commission set aside its said restraining orders theretofore made, restraining said plaintiff from removing its shops and division point from the City of Sapulpa to West Tulsa, and to approve the removal of said shops and division point, and to ratify the action of said plaintiff in removing said shops from the said City of Sapulpa to West Tulsa, as hereinbefore described. A copy of said application, together with all exhibits attached thereto, said exhibits consisting of the order of the Corporation Commission of the State of Oklahoma, No. 1232, order of the Corporation Commission of the State of Oklahoma, No. 3699, temporary restraining order issued by this Court in this cause, temporary injunction issued by this Court in this cause, and the order of this Court directing plaintiff to make application to said Commission, is hereto attached, marked Exhibit "A," and made a part of this supplemental complaint, the same as if all said instruments were fully quoted and set out in the body hereof.

That plaintiff, thereafter, pursued said matter before the Corporation Commission in good faith and with expedition, having had said application set down for hearing before said Commission on the 5th day of December, 1927. But plaintiff would further show to the court that the defend[fol. 85] ant, J. F. Lawrence and C. C. Taylor, and the City of Sapulpa and the Chamber of Commerce of the City of Sapulpa, on behalf of the inhabitants of said City, objected to the Corporation Commission hearing said matter on its merits, and objected to the Corporation Commission, at this time, passing upon the question as to whether or not it should issue its order permitting and ratifying said removal, and prior to the date of said hearing before said Commission, filed with said Commission its written objections to said hearing, contending therein that said Commission should not hear plaintiff's application for the reason that plaintiff had already removed its shops and division point from Sapulpa to West Tulsa in violation of said Commission's orders, and had not offered to restore its said shops and division point, even though said application should be denied by said Commission. A copy of said written objections, together with the exhibit attached thereto, is hereto attached marked Exhibit "B", and made a part

of this supplemental complaint the same as if fully set out and quoted herein.

VI

Plaintiff would further show to the court that on the 5th day of December, 1927, the day on which its said application was set for hearing before said Commission, plaintiff appeared, by its attorneys, before said Commission and, in good faith, insisted upon a hearing on its said application, but plaintiff shows that said defendants, J. P. Lawrence and C. C. Taylor, and the City of Sapulpa and the Chamber of Commerce of the City of Sapulpa, on behalf of the inhabitants of said City, appeared before said Commission by their duly authorized attorneys, and objected to said hearing, and insisted upon said Commission sustaining their said objections to said hearing, and as a result thereof plaintiff shows to the Court that said last named defendants and said above named parties, by their said objections, prevented said Commission from hearing plaintiff's said application and deciding same on its merits, but by said objections and the presentation thereof to said Commission at said time, caused said Commission to make its order refusing and declining to hear plaintiff's said application. A copy of said order of said Commission so made on the 5th day of December, 1927, denying this plaintiff a hearing on [fol. 86] its said application, is hereto attached marked Exhibit "C", and made a part of this supplemental complaint, the same as if fully quoted and set out herein.

VII

Plaintiff shows to the court that the effect of the ruling of the Commission is that it will not hear plaintiff's said application until it has removed its shops and division point from West Tulsa to Sapulpa. In this connection, plaintiff alleges that such a move at this time would cost plaintiff an immediate cash expenditure of approximately $200,000.00; that it would materially disrupt and disarrange the efficient service now being rendered by the terminal facilities at West Tulsa; that such a movement would not only disarrange and disorganize the service being rendered at West Tulsa, but would handicap the flow of traffic over prac-

tically the entire road by reason of interfering with the manner in which the trains are being run through the different terminals.

In order to remove the shops and division point from West Tulsa to Sapulpa, and at the same time continue to render the public the service that is now being rendered, it would be necessary for plaintiff not only to make an immediate expenditure of approximately $300,000.00, but such a move, if the same service as is now being rendered to the public were maintained, would mean an additional expenditure in the way of extension and reconstruction of yards at Sapulpa, and the purchase of additional motive power, of some $3,000,000.00. In addition to the above, plaintiff would suffer a monthly loss of more than $25,000.00, which sum is now being saved by plaintiff by reason of the consolidation of the Sapulpa and Tulsa terminal facilities, and the operation of same at West Tulsa.

By reason of the things above enumerated, plaintiff shows to the Court that it should not be compelled to comply with the condition placed upon it by the Corporation Commission in order to secure a hearing on its application; that such a compliance would work a great injustice to both plaintiff and the shipping public.

[fol. 87] VIII

Plaintiff further shows to the court that by reason of the removal of its shops from Sapulpa to West Tulsa, it has been enabled to materially increase the efficiency of its service to the public; that a careful check of its expenditures for the eight months from March to October, inclusive, 1927, during which time its shops and division point were in operation at West Tulsa, shows a reduction of its operating expenses, by reason of the removal of its terminal facilities from Sapulpa, and the consolidation of same with those at West Tulsa, of more than $25,000.00 per month, or more than $300,000.00 per annum; that an inspection of its facilities during said months has shown a material increase in the efficiency of its public service; that such inspection has also shown that the location of its terminal facilities at West Tulsa, and the vicinity thereof, is sanitary, healthful and in every way suitable to the convenience, health and enjoyment of its employes.

IX

Plaintiff shows it has fully complied with this Honorable Court's order, directing it to make application as above described, to the Corporation Commission of the State of Oklahoma; that said Commission has refused to hear said application except upon the condition as in this supplemental complaint described and set forth. Plaintiff says, therefore, that this Court ought, in justice, equity and good conscience, to proceed with the hearing of this cause as prayed for in plaintiff's original complaint.

Wherefore, premises considered, plaintiff prays that this Court set this cause down for final hearing, and upon final hearing plaintiff prays, as it prayed in its original complaint and its amendment thereto, that said defendants, and each and every one of them named and described herein, and all persons for whom said defendants appear in said above described cause, and all persons whomsoever, acting [fol. 88] under or by the authority of said defendants, or any of them, be restrained and enjoined from prosecuting, hearing, conducting or permitting a hearing to be had, or taking or permitting any further proceedings to be had in the cause pending before the Corporation Commission of the State of Oklahoma, as herein and in its original complaint described, or from making, promulgating or enforcing, or causing to be made, promulgated or enforced any order prohibiting plaintiff from removing any of its shops or appurtenances thereto, or its division point, or any part thereof, from the City of Sapulpa to the City of Tulsa, and that they, and all of them, be further restrained from doing any act having for its purpose to prevent the changing of the run of any of plaintiff's passenger trains so that the crews thereon may change at the City of Tulsa instead of the City of Sapulpa, or from doing any act which has for its purpose the prevention of said plaintiff from removing its shops or division point from the City of Sapulpa to the City of Tulsa, or from doing any act which has for its purpose the prevention of plaintiff from retaining its said shops or division point, or any part or either of them, at the City of Tulsa, instead of the City of Sapulpa, or from doing any act which, in any manner, interferes with the plaintiff maintaining its said shops and division point at the City of Tulsa.

Plaintiff further prays that on a final hearing of this cause, the petition of this plaintiff in removing its shops and division point from the City of Napolpa to West Tulsa be finally approved, and that said defendants, and all of them, and all persons for whom said defendants appear in this cause, and the agents, servants and representatives of said defendants, or any such persons, be permanently enjoined from doing any of the acts as above described.

Plaintiff further prays that it be granted such other relief, either general or special, to which, in good conscience and equity, it may be shown to be entitled in the premises.

E. T. Miller, C. B. Stuart, Price & Franklin, Attorneys for Plaintiff.

[fol. 89] Duly sworn to by Ben Franklin. Jurat omitted in printing.

[fol. 90] Exhibit "A" to Supplemental Complaint

Before the Corporation Commission of the State of Oklahoma

Cause No. ....

In re Application of the St. Louis San Francisco Railway Company to said Commission to set aside its outstanding orders heretofore made restraining said railway company from removing its shops and division point from the city of Napolpa to the city of Tulsa, to approve the removal of said shops and division point, and to ratify the action of said railway company in removing said shops from the said city of Napolpa to the city of Tulsa

Application to the Honorable Corporation Commission of the State of Oklahoma

Comes now the St. Louis San Francisco Railway Company, applicant herein, and respectfully shows to this Honorable Commission as follows:

I

That applicant is a railroad corporation, owning, operating and managing a line of steam railroad in the State of

Oklahoma; that prior to the 19th day of January, 1927, applicant, or its predecessors, had, for a period of about thirty years, maintained machine and repair shops and a division point at the City of Sapulpa, Oklahoma; that a short time subsequent to the 19th day of January, 1927, it removed its said shops and division point from the City of Sapulpa to the City of Tulsa, under the conditions in the application hereinafter described and set forth.

II

That more than thirty years ago the St. Louis & San Francisco Railway Company built and acquired lines of railroad extending from the cities of St. Louis and Kansas City to Afton, Oklahoma, at which point said lines of railroad united and extended in a single line in a southwesterly [illegible] direction into the State of Oklahoma, and the cities of Tulsa and Sapulpa, in said State, and thereafter, said company built lines of railroad extending south from the said City of Sapulpa into the State of Texas to the City of Sherman in said State, and a line of railroad extending east from said City of Sapulpa, through Oklahoma City, Easton and to the City of Ardmore in the State of Texas; that owing to the character of motive power and equipment at said time successfully used by said railroad company, it became and was necessary and convenient in the transaction of the business of said railroad company that division points be located on said railroad at a distance of not to exceed one hundred miles from each other; that owing to the relative size of the different cities through which said lines of railroad passed, and owing to the fact that at the times of the construction of said lines of railroad as hereinbefore described, said railroad company received a large volume of its business from the vicinity of Sapulpa, and owing to the further fact that it appeared to those having to do with the construction of said lines of railroad at said times that the City of Sapulpa would become the business shipping center of its locality, said railroad company located, built and constructed at the said City of Sapulpa certain railroad shops and a division point on said lines of railroad, and that said shops and division point have ever since and until a short time subsequent to the 19th day of

January, 1927, been maintained and operated at said City of Sapulpa.

III

That heretofore and on the 1st day of November, 1916, this applicant became the owner, by purchase, of the above lines of railroad and railroad shops and has since owned and operated same, with the exception of the period of Federal control extending from the 28th day of December, 1917, to the 1st day of March, 1920, during which time said lines were operated and controlled by the United States Government.

[fol. 92] IV

That although from the conditions existing at the time of the construction of said lines of railroad it appeared to those having to do with the construction of same that it would be to the best interest of said railroad and to the shipping public that certain railroad shops used in connection with said lines of railroad and a division point thereon be located at the City of Sapulpa, and that the City of Tulsa would be of minor importance as a railroad and shipping center, conditions have so changed as to make it imperative on the part of the operators of said lines of railroad to locate extensive shops and yards at the City of Tulsa, and at a point therein known as West Tulsa, and remove said division point from the City of Sapulpa to the said City of Tulsa; that at the time of the construction of said lines of railroad, the City of Tulsa was comparatively small, and it appeared to those constructing said lines of railroad that the City of Sapulpa would develop into a large city and an important shipping center, and that Tulsa would remain a comparatively small town and its shipping interests would be of minor importance, but notwithstanding said appearances, the City of Tulsa has developed into a city of approximately [illegible] inhabitants, and has become one of the largest, if not the largest, shipping center in the State of Oklahoma; that applicant now owns and operates, and has, for many years, owned and operated a line of railroad extending in a southwesterly direction from said City of

Tulsa through the cities of Pawnee, Perry and Enid, and that said line of railroad has for many years brought a great volume of freight and passenger business into the City of Tulsa; that immense oil fields and oil properties have been developed and constructed and are being operated in the vicinity of and in all directions from the said City of Tulsa, and the said City of Tulsa has become the center of said operations; that other industries, transacting great volumes of business, have been located and are now being operated in the said City of Tulsa and in the vicinity thereof, and that said industries use the said City of Tulsa as their shipping [fol. 93] center; that the City of Sapulpa has developed only to a very minor degree; that the population of said city at this time is approximately 15,000 people; that very few of the industries operated as hereinbefore set forth, use the City of Sapulpa, or the terminals of said lines of railroad located thereat, as a shipping center.

V

That at the time of the location of said shops and division point heretofore described at the said City of Sapulpa, it appeared to those having to do with the construction and operation of said lines of railroad at said times, that the topography of the ground in the vicinity of said yards and said shops would permit the location and construction thereat of sufficient facilities for the transaction of all shipping business necessary to be transacted at the shops and division point located in that vicinity, but applicant shows to the Commission that owing to the great increase in the volume of business which must be transacted at the shops and division point located at either Tulsa or Sapulpa, and owing to the fact that the shops and yards as heretofore located at said City of Sapulpa were hemmed in by the business houses of the City of Sapulpa on the south of said yard and shops, and by a great hill immediately adjacent to said shops and said yards on the north thereof, and owing to the further fact that said shops and said yards were located on a decided curve in the right of way of applicant at said point, it has been and will continue to be impossible for this applicant to construct at said point sufficient shops and yards to transact the business necessary to be trans-

acted at the division point shops and yards which must be located in said vicinity, or in the vicinity of the City of Tulsa.

VI

That at the time of the construction of said railroad lines, as hereinbefore set forth, owing to the condition of the roadbed, the character of the motive power, engines and other [fol. 94] equipment, it was necessary for the proper conduct of the business transacted by said railroad company, to locate division points and repair shops at points not to exceed one hundred miles from each other, but in recent years the condition of the roadbed, bridges, etc., has been improved to such an extent; the motive power used by those operating said lines of railroad has been increased to such an extent; the engines and other equipment used in the transaction of said business have been enlarged to such an extent, that at this time it is necessary, to the proper conduct of said business, to increase the distances between the division points and repair shops, and it has become and is necessary to remodel the plans of operation of said railroad lines, in that the division points and shops be located much farther apart, and that longer runs be made by crews in charge of said railway company's trains; that in carrying out this necessary scheme, it has become necessary to locate the shops and division point to be located in the vicinity of Sapulpa and Tulsa, at the City of Tulsa.

VII

That this applicant is now and has been at all times mentioned engaged extensively in interstate commerce; that all trains running through the yards and division point described herein are engaged in interstate commerce; that both the switch and road engines used by applicant in and through said yards and shops are constantly engaged in interstate commerce; that there is seldom a train movement made in the vicinity of said shops that has not for its purpose the furtherance of applicant's interstate commerce business; that a large proportion of the shipments hereinbefore mentioned originating at and passing through the City of Tulsa, are shipments destined to points outside of

the State of Oklahoma, or shipments passing through the State of Oklahoma, or shipments from points outside the State of Oklahoma destined to points within the State of Oklahoma; that applicant with its said lines of railroad is engaged in an extensive interstate railroad business, carrying a large volume of commerce, both freight and passenger, from Kansas City, Missouri, and points north and east, to [fol. 95] Tulsa and other points within the State of Oklahoma, and to points south in the State of Texas, and from St. Louis, Missouri, and points north, east and south to Tulsa, and other points within the State of Oklahoma, and points in other states to the south; that the facilities and equipment constituting the shops and division point herein described, are necessary and imperative to the transaction of said interstate business, and are now being, and have been, for a long time, used extensively in the carrying on of said business.

VIII

That those of applicant's officers and managers having to do with the movement of its business, have, after mature consideration and deliberation, decided, and applicant alleges, that it is to the best interest of the shipping public, passengers and those having business with said railroad company, and to the best interests of applicant that its railroad shops and division point heretofore located at the City of Sapulpa, be located at the City of Tulsa, and located therein at a point commonly known as West Tulsa and consolidated with the shops and yards heretofore located at said point. Applicant states that said removal and consolidation has promoted, and will greatly promote, accommodate and aid applicant's intra-state and interstate commerce business.

IX

That the removal of its shops and division point from Sapulpa to Tulsa, a distance of about fourteen miles, and a consolidation of said shops with the shops heretofore located at the City of Tulsa, as hereinabove described, will and has enabled applicant to promote and aid both its intrastate and interstate commerce business by eliminating annually hundreds of thousands of dollars of operating expense; that the removal of said shops and division point

from the City of Sapulpa to the City of Tulsa, as hereinafter described, has been affected at an expenditure of about $150,000.00; that since said removal has been completed, [fol. 96] applicant has been able to show a net average saving by reason of said removal of more than $33,500.00 per month, said monthly savings not including many items which, so far, it has been impossible to reduce to a money basis, but applicant says that when said last named items are computed and reduced to a money basis, the average monthly saving will be far in excess of that above set forth. Applicant further says that it has not, by the removal of its shops and division point from Sapulpa to Tulsa, impaired, in any way, its service to the shipping public at either Sapulpa or Tulsa, but, on the other hand, has greatly improved its service to the public generally.

X

Applicant further shows to this Honorable Commission that prior to the time of the removal of its said shops and division point from Sapulpa to Tulsa, the time had come, and the business of said applicant had reached a point, when the shops and division point as then located at the City of Sapulpa, were entirely inadequate for the transaction of applicant's business, and for the rendition of that adequate service to the public generally demanded and required by this Commission and the Interstate Commerce Commission. Applicant further shows that if said shops had been retained at the City of Sapulpa, it would have meant a current loss of nearly $50,000.00 per month; that it also would have been imperative on applicant's part to have made an expenditure of some three million dollars for repairs and extensions of said shops at Sapulpa, and that even then said shops and yards located thereat could not have been put in condition to have rendered that adequate service which is now being rendered by applicant with its shops and yards located at Tulsa. This for the reason that owing to the curved condition of applicant's right of way at Sapulpa, and owing to the topography of the land in the vicinity of its yards and shops at Sapulpa, it would have been, and is now, [fol. 97] impossible for shops and yards to be constructed and maintained at Sapulpa that will give service equal to that now furnished at the City of Tulsa. Applicant fur-

ther shows that even if other conditions were favorable to extended yards at the City of Sapulpa, it would have been necessary for applicant to purchase additional lands for its yards at said point, thus unnecessarily incurring a great additional expense.

XI

Applicant further shows that the location of its shops at West Tulsa and the vicinity thereof, is entirely sanitary and habitable, there being nothing in the location of said shops and the vicinity thereof that will, in any wise, affect the health of the employes of said railroad company at said new location.

XII

Applicant would further show to this Honorable Commission that during the year 1917, applicant was considering removing its shops and division point from the City of Sapulpa to the City of Tulsa, it being prompted by some of the reasons set forth in this application; that during the month of February, 1917, certain citizens of the City of Sapulpa appeared before this Commission and filed complaint, which had for its purpose the prevention of applicant from removing its shops and division point as herein set forth; that thereafter on the 15th day of February, 1917, order No. 1232 was issued by this Commission, temporarily restraining applicant from removing its shops and division point from the City of Sapulpa to the City of Tulsa, a copy of said order being hereto attached, marked Exhibit "A," and made a part of this application, the same as if herein fully quoted; that during the pendency of said complaint, and after a partial hearing thereon had been had, the Legislature of the State of Oklahoma, during the session of 1917, passed a certain act now known as Sections Nos. 3482, 3483, 3484 and 3485, Compiled Oklahoma Statutes, 1921, said sections becoming effective during the year 1917 by the Governor's returning same to the Legis- [fol. 98] lature without his approval; that thereafter no further action of any character was taken in said cause then pending before this Honorable Commission.

That during the latter part of the year 1926, applicant again manifested its intention of removing at least a por-

tion of its division point from the City of Sapulpa to the City of Tulsa, and thereafter, and on the 29th day of December, 1926, certain citizens of the City of Sapulpa, to-wit: J. F. Lawrence and C. C. Taylor, appearing for themselves and on behalf of the Chamber of Commerce of the City of Sapulpa, and for other citizens of said City, appeared before the Corporation Commission and procured Order No. 3699, from this Honorable Commission which restrained applicant from removing any portion of its division point, or any portion of its shops from the City of Sapulpa to the City of Tulsa, until a hearing could be had thereon by this Commission, said order No. 3699 being hereto attached, marked Exhibit "B," and made a part of this application, the same as if fully quoted herein.

XIII

That thereafter, and on the 11th day of January, 1927, applicant filed its bill in equity in the Federal Court in and for the Northern District of the State of Oklahoma, setting forth the necessity for the removal of said shops and division point, describing the great and irreparable loss that applicant would incur if prevented from making such removal, showing that said removal was a matter that materially affected interstate commerce and was a matter materially affecting the management of the interstate commerce business of said railroad, and alleging that the statutes of the State of Oklahoma heretofore referred to, same being Sections Nos. 3482, 3483, 3484, and 3485, upon which the orders of this Commission heretofore described were based, were void and deprived applicant of rights guaranteed by the Constitution of the United States, and deprived it of its property without due process of law, and the equal [fol. 99] protection of law, as guaranteed to it by said Federal Constitution; that said statutes were discriminatory and also had the effect of regulating and burdening interstate commerce, and were an unconstitutional, arbitrary and unnecessary exercise of police power. In said bill, applicant prayed that the citizens of Sapulpa, the Attorney General of the State of Oklahoma, and members of this Commission, be enjoined from taking any action having for its purpose the prevention of said removal.

XIV

After the filing of the above mentioned bill in equity with the Federal Court, the Honorable Franklin E. Kennamer, Judge of said court, issued his restraining order, restraining said citizens of Sapulpa, Edwin Dabney, Attorney General of the State of Oklahoma, and the members of this Honorable Commission, from taking further action in any of the matters then pending before said Commission relative to the removal of said shops, until a hearing could be had in said Federal Court; also restraining applicant from removing its shops or division point, or any part thereof from the City of Sapulpa, until said hearing, a copy of said temporary restraining order is hereto attached, marked Exhibit "C," and made a part of this application, the same as if fully quoted herein.

That thereafter and on the 19th day of January, 1927, a hearing was had before the Honorable Arba S. Van Valkenburgh, Circuit Judge for the Eighth Circuit, and the Honorable Albert L. Reeves, District Judge, and the Honorable Franklin E. Kennamer, District Judge, on applicant's application for a temporary injunction, enjoining the parties above mentioned from, in any manner, interfering with its removal of its said shops and division point, and enjoining this Commission from retaining jurisdiction of said matter under the above named statutes, and at the conclusion of said hearing an order was made by said court granting applicant's prayer in the premises, and an order of tem [fol. 100] porary injunction was made by said court, a copy of which is heretofore attached, marked Exhibit "D," and made a part hereof, the same as if fully quoted herein.

XV

Thereafter, the defendants in said cause in equity appealed to the United States Supreme Court from the action of said District Court in granting said temporary injunction, but did not supersede the effect of said order; that during the pendency of said appeal in the United States Supreme Court, and during a time when said temporary injunction was in full force and effect, and after defendants in said cause had failed to supersede same, and after the United States District Court for the Northern

District of Oklahoma, composed of the three judges as aforesaid, had held that said statutes were unconstitutional and void, your applicant, in good faith, believing that said unsuperseded judgment would become final, and believing, as it yet believes, that said statutes were unconstitutional and void and extended to this Honorable Commission no jurisdiction of the matters involved herein, and in order to effect the great reduction in expense, as herein described, and in order that it might render much more adequate service to the public, removed its said shops and division point from the City of Sapulpa to the City of Tulsa, and thereby effected the great saving and increased its efficiency in service, as hereinbefore set forth in this application.

XVI

Your applicant would further show to this Honorable Commission that thereafter and on the 30th day of May, 1927, the United States Supreme Court reversed the judgment of the United States District Court for the Northern District of Oklahoma, and dissolved said temporary restraining order, holding that the evidence introduced at the hearing before said trial court was insufficient to show that danger of irreparable injury to your applicant which would justify the granting of the interlocutory order, but spe- [fol. 101] cifically reserving the question as to the constitutionality of said statutes. In said opinion, however, said United States Supreme Court indicated its desire to adhere to demands of comity and courtesy between Federal and State Governments where that could be done without irreparable damage, injury and sacrifice, and also indicated that before final hearing in said United States District Court, an application should be made to this Honorable Commission in the premises.

XVII

Applicant further shows to this Honorable Commission that on the 22d day of October, 1927, the United States District Court of the Northern District of Oklahoma, composed of the Honorable Arba S. Van Valkenburgh, Circuit Judge of the Eighth District, Albert L. Reeves, District Judge, and Franklin E. Kennamer, District Judge, made an order

directing that applicant come before this Commission as a preliminary step to the further hearing of said cause, and ask that the Commission dissolve its former orders enjoining the removal of said shops and division point, and permit same to be moved, and ratify the action of this applicant in so removing its shops and division point as above set forth. A copy of said order so made by said court is hereto attached, marked Exhibit "E," and made a part of this application, the same as if fully quoted herein.

XVIII

Applicant would further show to the Commission that it has removed its shops and division point from the City of Sapulpa to the City of Tulsa, in good faith, believing, as it had a right to believe, that it was justified in so removing same under the unsuperseded judgment of the United States District Court for the Northern District of Oklahoma; that it has by such action made a saving of more than $33,500.00 per month during such removal; that it is rendering a better service to the public in general since said removal that is was possible for it to render with its said shops and division point at the City of Sapulpa; that the [fol. 102] service of the business originating at Sapulpa has been in no manner impaired; that for applicant to again remove its shops and division point from the City of Tulsa to the City of Sapulpa, would mean a cash expenditure of more than $300,000.00, a current monthly loss of more than $33,500.00, and a great impairment of its service to the passenger and shipping public, as hereinbefore described.

Wherefore, premises considered, applicant prays that its application be set down for hearing at the earliest practicable moment and that notices issue to J. F. Lawrence, Tulsa, Oklahoma, C. C. Taylor, Sapulpa, Oklahoma, and Edwin Dabney, Attorney General of the State of Oklahoma, defendants in equity cause No. 207, pending in the United States District Court for the Northern District of Oklahoma, and to the City of Sapulpa, and that said notices be served on all said parties not less than ten days before the date set for said hearing.

Applicant further prays that on final hearing, this Honorable Commission set aside its orders heretofore made

preventing and restraining applicant from removing its shops and division point, or any part thereof, from the City of Sapulpa to the City of Tulsa, and that said removal be approved, and that this Honorable Commission ratify the action of applicant in removing its said shops and division point from the City of Sapulpa to the City of Tulsa, as hereinbefore set forth and described.

Applicant further prays for all other relief, general and special, to which it may be, in the premises, entitled at the hands of this Commission.

E. T. Miller, C. B. Stuart, Cruce & Franklin, Attorneys for Applicant.

[fol. 103] Before the Corporation Commission of the State of Oklahoma

Cause No. 2812

J. F. Lawrence and C. C. Taylor, Complainants,

vs.

St. Louis San Francisco Railway Company, Defendant

(Exhibit A)

Order No. 1232

This cause came on to be heard on this 5th day of February, 1917, upon the complaint of the complainants and their application for temporary order and the same being considered by the commission, it is ordered that said cause be set down for hearing in the District Court room at Sapulpa, Oklahoma, at ten o'clock A. M., on February 19, 1917; that notice be given the defendant as provided by law and that in the meantime the said defendant and all its officers, agents and employes, until the further order of the commission, be, and they are hereby, prohibited from moving the division point and shops of said Railway Company or either or any of them which are now located at Sapulpa, Oklahoma, from their present location.

It is further ordered that a copy of this order be served on the defendant.

Done at Oklahoma City, Oklahoma, on this the 5th day of February, 1917.

Corporation Commission of Oklahoma. (Signed by the Commission) by ——, Chairman. ——, Commissioner.

[fol. 1184] Before the Corporation Commission of the State of Oklahoma

Cause No. 2812

J. F. Lawrence and C. C. Eaton, Complainants,

vs.

St. Louis-San Francisco Railway Company, Defendant

(Exhibit B)

Order No. 3089

This cause coming on to be heard on this 29th day of December, 1926, upon motion of the complainants, and it appearing that the defendant is taking steps toward the removal of its shops and division point from the City of Sapulpa in violation of the order of this Commission entered on the 5th day of February, 1917, and in violation of the Act of the Legislature passed in 1917, it is ordered by the Commission that said cause be set down for hearing on the 17th day of January, 1927, and that in the meantime, and until the further order of the Commission, the defendant be, and it is hereby prohibited from moving its shops or division point from the City of Sapulpa, from changing the runs of either its passenger or freight trains, or from taking any other steps towards changing its division point for either passenger or freight service from the said City of Sapulpa.

It is further ordered that a copy of this order be served on the defendant.

Done at Oklahoma City, Oklahoma, on the date first above named.

Corporation Commission of Oklahoma, by Fred Caughey, Chairman. W. C. Carter, Commissioner.

Attest: E. D. Graham, Acting Secretary.

[Ed. 96] In the District Court of the United States for the Northern District of Oklahoma

No. 96, Equity

St. Louis-San Francisco Railway Company, Plaintiff,

vs.

J. B. Lawrence, C. C. Taylor, Elbert Bellatt, Attorney General of the State of Oklahoma; Fred C. Gipson, Fred Gipson, and C. C. Childs, Individual and as Members of the Corporation Commission of the State of Oklahoma, Defendants

(Exhibit C)

Temporary Restraining Order

This matter coming on for hearing before the Honorable Franklin E. Kennamer, Judge of the United States District Court for the Northern District of the State of Oklahoma, upon the verified petition of the plaintiff, St. Louis-San Francisco Railway Company, and it appearing to the court that the plaintiff, upon the facts alleged in said petition, is entitled to the relief prayed for, and that the said J. B. Lawrence, C. C. Taylor, Elbert Bellatt, Attorney General of the State of Oklahoma, Fred C. Gipson, Fred Gipson and C. C. Childs, individually, and as members of the Corporation Commission of the State of Oklahoma, should be enjoined and restrained until further order of this Court, from proceeding further in a certain action pending before the Corporation Commission of the State of Oklahoma, wherein the said J. B. Lawrence and C. C. Taylor are complainants, and the St. Louis-San Francisco Railway Company is defendant, and causing bearing Corporation Commission's No. [96], which said action has [Ed. 96] for its purpose the prevention on the part of the St. Louis-San Francisco Railway Company from removing its shops and division point from the City of Sapulpa, and from putting into effect certain changes in the time of its interstate passenger trains, according to a schedule about to be put into effect by said Railway Company;

Wherefore, it is ordered and adjudged that said defendants, J. B. Lawrence, C. C. Taylor, Elbert Bellatt, Attorney

[Ed. Note] In the District Court of the United States for the Northern District of Oklahoma

No. 287, Equity

C. Lucas Sun Pleasure Manor Company, Plaintiff,

vs.

J. B. Lawrence, C. C. Taylor, Davis Deuce, Attorney General of the State of Oklahoma; Frank C. Carter, Fred C. Squire, and C. C. Childers, Individually and as Members of the Corporation Commission of the State of Oklahoma, Defendants

(Exhibit D)

Temporary Injunction

This matter coming on for hearing on plaintiff's application for a temporary injunction on this 19th day of January, 1927, before the Honorable Arba S. Van Valkenburgh, Circuit Judge for the eighth Circuit, and the Honorable Albert L. Reeves, District Judge, and the Honorable Franklin E. Kennamer, District Judge, pursuant to the order heretofore on the 11th day of January, 1927, made by the Honorable Franklin E. Kennamer, District Judge, granting a temporary restraining order herein, and the plaintiff appearing by its attorneys, Monnet, Green and Franklin, and the defendants appearing by their attorneys, Judge C. B. Ames, Honorable S. Taylor, and W. L. Blakemore, and all parties having announced ready for hearing, said matter was by agreement submitted on affidavits introduced in evidence by both plaintiff and defendants, and the court having considered said affidavits and having heard argument of counsel both for plaintiff and defendants, and the court having considered said affidavits and having heard argument of counsel both for plaintiff and defendants, is of the opinion that the [Ed. Note] temporary injunction prayed for by plaintiff herein should be in all things granted, and that the defendants, J. B. Lawrence, C. C. Taylor, Edwin Nelson, Attorney General of the State of Oklahoma, Frank C. Carter, Fred C. Squire and C. C. Childers, individually and as

members of the Corporation Commission of the State of Oklahoma, and all persons similarly situated, and all persons acting with or by the authority of any said defendants, should be enjoined until further order of this court from proceeding further in a certain action pending before the Corporation Commission of the State of Oklahoma wherein the said J. F. Lawrence and C. C. Taylor are complainants and the St. Louis-San Francisco Railway Company is defendant, said cause being cause No. 2812 of the Corporation Commission of the State of Oklahoma, which said action has for its purpose the prevention on the part of the said St. St. Louis-San Francisco Railway Company from removing its shops and division point from the City of Sapulpa and from putting into effect certain changes in the runs of its trains according to its schedule about to be put into effect by said railway company.

Wherefore, it is ordered, adjudged and decreed that said defendants, J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma, Frank C. Carter, Fred Clapshaw and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and all persons similarly situated, and all persons acting with them, their agents, servants, employees and all persons acting by or under their authority or the authority of any of them, and all persons for whom the said J. F. Lawrence and C. C. Taylor appeared in the said above described cause so pending before the Corporation Commission of the State of Oklahoma, be and all of them are hereby enjoined and restrained from prosecuting, hearing, or conducting or permitting a hearing to be had, or [fol. 110] taking or permitting any further proceedings to be had in the above described cause of action now pending before the Corporation Commission; that said defendants, and each and all of them, are hereby further restrained and enjoined from making, promulgating or enforcing, or causing to be made, promulgated or enforced, any order prohibiting the above named plaintiff from removing any of its shops or appurtenances thereto, its division point or any part thereof, or from changing the run of any of the crews on said trains now in said schedule, or doing anything that will in any manner interfere with or prohibit plaintiff from

removing its shops or any appurtenances thereto, or its division point or any part thereof, or in changing the run of any of its trains until the further order of this court.

It is the further order of this court that no proceedings had herein or by the Corporation Commission of the State of Oklahoma, or any order heretofore issued by said Corporation Commission, shall in any event prohibit plaintiff from putting into effect on the 23rd day of January, 1927, its train schedule above referred to herein.

This order is to become effective upon the filing by the plaintiff and the approval thereof of the Clerk of this Court of a bond properly conditioned according to law in the sum of $50,000.00.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. F. E. Kennamer, United States District Judge.

[fol. 111] In the District Court of the United States for the Northern District of Oklahoma

No. 207, Equity

St. Louis San Francisco Railway Company, Plaintiff,

vs.

J. F. Lawrence, C. C. Taylor, Edwin Darney, Attorney General of the State of Oklahoma; Frank C. Carter, Fred Capshaw, and C. C. Childers, Individually and as Members of the Corporation Commission of the State of Oklahoma, Defendants

(Exhibit E)

Order Directing Plaintiff to Make Certain Application to the Corporation Commission of the State of Oklahoma

Now on this 22nd day of October, 1927, the above matter being regularly before the court, and the plaintiff appearing by its attorneys, E. T. Miller, C. B. Stuart and Cruce & Franklin, and the defendants appearing by their attorneys,

C. B. Ames, and T. L. Blakemore, and the court having heard the argument and contention of counsel for both plaintiff and defendants, and having considered the opinion of the Supreme Court of the United States rendered in this case, is of the opinion that before further steps looking to a final hearing of this cause are taken, that said plaintiff should make application to the Corporation Commission of the State of Oklahoma, to dissolve its restraining orders heretofore made, restraining said plaintiff, from removing its shops and division point from the City of Sapulpa to the City of Tulsa, and to ratify the action of said road in removing its said shops and division point during the pendency of this cause, and it further appearing to the court that the United States Supreme Court in its opinion ren- [fol. 112] dered in this cause, has plainly indicated that it is its desire to adhere to the mandate of the state law wherever that can be done without irreparable damage, injury or sacrifice, and it further appearing to this court that application as directed herein may be made to the Corporation Commission of the State of Oklahoma, by plaintiff, without its surrendering any of its alleged rights prayed for in its complaint filed herein, and that the application hereinafter directed may be made by said plaintiff without this court surrendering its jurisdiction of this cause;

It is, therefore, ordered that plaintiff, as a preliminary step to further hearing of this cause, and without unnecessary delay, and in good faith, make application to the Corporation Commission of the State of Oklahoma, to dissolve its restraining orders heretofore made by it, restraining said plaintiff from removing its shops and division point, or any part thereof, from the City of Sapulpa to the City of Tulsa, and to ratify the action of said plaintiff in the removal of its said shops and division point from the City of Sapulpa to the City of Tulsa, which has been effected during the pendency of this cause in this court.

It is further ordered that unless otherwise ordered by this Court, final hearing of this cause be suspended until the result of said application to the Corporation Commission be ascertained, and it is further ordered that this court shall and will retain jurisdiction of this cause so that any action, order or judgment may be taken or made by this

court that may be necessary to protect the rights of any parties hereto.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Franklin E. Kennamer, United States District Judge.

[fol. 113] Exhibit "B" to Supplemental Complaint

Before the Corporation Commission of the State of Oklahoma

Cause No. 2812

J. F. Lawrence and C. C. Taylor, Complainants,

vs.

St. Louis-San Francisco Railway Company, Defendant

In re application of the St. Louis-San Francisco Railway Company to said Commission to set aside its restraining orders heretofore made restraining said railway company from removing its shops and division point from the city of Sapulpa to the city of Tulsa, to approve the removal of said shops and division point, and to ratify the action of said railway company in removing said shops from the said city of Sapulpa to the city of Tulsa

Objection of the Complainants and Others to the Hearing of said Application Unless the St. Louis-San Francisco Railway Company Purges Itself of Contempt by Returning Its Shops and Division Point to the City of Sapulpa

Come now the complainants in said cause, and also the City of Sapulpa and the Chamber of Commerce of the City of Sapulpa on behalf of the inhabitants of said city, and object to the hearing of the aforesaid application of the St. Louis-San Francisco Railway Company unless and until the said railway company purges itself of contempt by returning its shops and division point to the City of Sapulpa, and in support of their objections respectfully show to the Commission that by Order No. 1232, entered in this cause

on the 5th day of February, 1917, said railway company was ordered not to move its division point and shops, or either or any of them, which were then located at Sapulpa, Okla- [fol. 114] homa, from their present location until the further order of the Commission; that again in said cause, by Order No. 3639 entered on the 29th day of December, 1926, the said railway company was ordered by the Commission not to move its shops or division point from the City of Sapulpa until the further order of the Commission, and said cause was set down for hearing on the 17th day of January, 1927.

That thereafter, on the 11th day of January, 1927, said railway company obtained a temporary restraining order from the United States District Court of the Northern District of Oklahoma, restraining this Commission, the Attorney General of the State, and the complainants in this cause, from further proceedings, and on the 19th day of January, 1927, obtained a temporary injunction from the said United States District Court restraining this Commission, the Attorney General of the State, and the complainants in this cause, and all other persons similarly situated, from proceeding further and from taking any steps towards enforcing the orders of this Commission; that the defendants in said cause pending in the said United States District Court immediately took an appeal to the Supreme Court of the United States, and while said appeal was pending the said railway company hurriedly moved its shops and division point from Sapulpa to West Tulsa; that the Supreme Court of the United States, on the 30th day of May, 1927, reversed the order of the said District Court granting the temporary injunction, and remanded the cause for further proceedings; that when the mandate was filed in the said District Court said Attorney General of the State, and the said J. F. Lawrence and C. C. Taylor filed a motion in the said United States District Court to require the said railway company to return its shops and division point to the City of Sapulpa; that said motion was submitted to the United States District Court on the 22nd day of October, 1927, and said court, with three judges sitting, took said motion under advisement and the same has not yet been decided by the said United States District Court. A copy of the [fol. 115] order made by the United States District Court

at said time is hereunto attached, marked Exhibit "A", and referred to as a part of these objections.

These objectors, therefore, respectfully show to the Commission that the said railway company has flagrantly and defiantly violated both orders heretofore rendered by this Commission, and the statute of the State of Oklahoma applicable to such cases, and that said railway company in the present application does not offer to restore its shops and division point to Sapulpa under any contingencies, even though the present application should be denied.

Because said railway company is in contempt of this Commission, and does not in any way offer to purge itself of said contempt, these objectors respectfully object to its application being heard by this Commission unless it restores its shops and division point to the City of Sapulpa, or in good faith offers to do so in the event this Commission denies its application and orders the railway company to return its shops and division point to the City of Sapulpa.

J. F. Lawrence, C. C. Taylor, City of Sapulpa, Oklahoma, Chamber of Commerce of the City of Sapulpa, Oklahoma, by C. B. Ames, T. L. Blakemore, their Attorneys.

[fol. 116] In the District Court of the United States for the Northern District of Oklahoma

Equity. No. 207

St. Louis-San Francisco Railway Company, Plaintiff,

vs.

J. F. Lawrence et al., Defendants

(Exhibit A)

Order

This cause came on to be heard on the 22nd day of October, 1927, upon the motion of J. F. Lawrence, C. C. Taylor, and Edwin Dabney, Attorney General, to require the plaintiff in said cause to restore the status quo existing at and before the temporary injunction was granted by returning the shops and division point to Sapulpa. The plaintiff ap-

peared by its attorneys, E. T. Miller, C. B. Stuart and Cruce & Franklin, and the moving defendants appeared by their attorneys, C. B. Ames, T. L. Blakemore and C. J. Davenport. When the court convened there was sitting Hon. Arba S. Van Valkenburgh, Circuit Judge, Hon. Albert L. Reeves, District Judge, and Hon. F. E. Kennamer, District Judge and the Judge of said court. Thereupon, the moving defendants objected to three judges sitting in said cause on the ground that their motion to require restitution did not require or permit the presence of three judges under Sec. 380 of the United States Code, or any other provision of law. Upon this motion being presented and argued it was overruled by the court composed of three judges, as aforesaid. Thereupon, the moving defendants presented an application to the Honorable F. E. Kennamer, Judge [fol. 117] of said court, praying that he sit alone and, as Judge of said court, hear their motion, and this motion was overruled by the Hon. F. E. Kennamer, District Judge.

Thereupon, the aforesaid motion to require restitution was presented to the court composed of three judges, and after argument of counsel the court took said motion under advisement, but retained jurisdiction of said cause.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. F. E. Kennamer, District Judge.

O. K. ——— ———, Attorneys for Plaintiff. ———, Attorneys for Defendants.

[fol. 118] Exhibit "C" to Supplemental Complaint

Before the Corporation Commission of the State of Oklahoma

Cause No. 2812. Order No. 40331/2

J. F. Lawrence and C. C. Taylor, Complainants,

vs.

St. Louis San Francisco Railway Company, Defendant

In re Application of the St. Louis-San Francisco Railway Co. to said Commission to set aside its restraining orders heretofore made restraining said railway company from

removing its shops and division point from the city of Sapulpa to the city of Tulsa, to approve the removal of said shops and division point, and to ratify the action of said railway company in removing said shops from the said city of Sapulpa to the city of Tulsa

Order

This cause came on to be heard before the Commission on the 5th day of December, 1927, upon the objections of the complainants and the city of Sapulpa and the Chamber of Commerce of the city of Sapulpa to a hearing at this time of the above mentioned application of the St. Louis-San Francisco Railway Company, and it appearing to the Commission that the St. Louis San Francisco Railway Company has heretofore moved its shops and division point from the city of Sapulpa to the city of West Tulsa, under a claim that said removal was affected under and by virtue of an order issuing out of the Federal Court in and for the Northern District of Oklahoma, enjoining the complainants, this Commission and the Attorney General of the State of Oklahoma from enforcing the orders of this Commission and the statutes of Oklahoma hereinafter mentioned, and under the further claim that the Honorable Federal Court of the Northern District of Oklahoma, did, on the 22d day of October, 1927, while it had jurisdiction of the cause, and while still retaining jurisdiction for final hearing, make an order that the defendant herein appear before this Commission and seek its approval of the defendant's removal of the shops and division point as herein mentioned, and it appearing to the Commission that notwithstanding said [fol. 119] claim, said removal was in violation of Order No. 1232 entered in this cause on the 5th day of February, 1917; in violation of Order No. 3699 entered in this cause on the 29th day of December, 1926, and in violation of the statutes of the State of Oklahoma, and it appearing that said Railway Company has not moved and returned its shops and division point to the city of Sapulpa, or offered to do so;

It is, therefore, ordered by the Commission that the objections of the complainants, the City of Sapulpa, and the Chamber of Commerce of the city of Sapulpa, be and they are hereby sustained, and the Commission declines to hear

the application of the St. Louis San Francisco Railway Company, aforesaid, until the said Railway Company has returned its shops and division point from the city of West Tulsa to the City of Sapulpa.

Ordered, adjudged and decreed this the 5th day of December, 1927.

Corporation Commission of Oklahoma, Fred Capshaw, Chairman. F. C. Carter, Commissioner. C. C. Childers, Commissioner.

Attest: E. D. Hicks, Jr., Acting Secretary.

[File endorsement omitted.]

[fol. 120] In United States District Court

[Title omitted]

Motion to Dismiss—Filed January 17, 1928

Come now the defendants in said cause and move the court to dismiss the bill of complaint, and supplemental bill of complaint, for the reason that said bill and supplemental bill do not state facts sufficient to constitute a cause of action against the defendants, or to entitle the complainant to equitable relief.

Edwin Dabney, Attorney General, Attorney for Members of the Corporation Commission and the Attorney General. C. B. Ames, C. J. Davenport, F. L. Blakemore, Attorneys for the Remaining Defendants. ——— ———, of Counsel.

[File endorsement omitted.]

[fol. 121] In United States District Court

[Title omitted]

Decree—Filed March 12, 1928

This matter came on for hearing on defendants' motion to dismiss, complainant's original and supplemental bills,

before the Honorable Aria S. Van Valkenburgh, Circuit Judge for the Eighth Judicial Circuit, and the Honorable Albert L. Reeves, District Judge, and the Honorable Franklin E. Kennamer, District Judge, duly convened under section 266 of the Judicial Code of the United States as amended, the plaintiff appearing by Mr. C. B. Stuart and Mr. Ben Franklin, its attorneys, and defendants appearing by Mr. T. L. Blakemore and Mr. D. A. McDougall, their attorneys, and all parties having announced ready for hear-
[fol. 122] ing, and having announced to the court that the case was submitted for final decree upon the motion to dismiss, without further pleadings or other procedure, and the court having heard the arguments of counsel, having examined the pleadings and authorities submitted, and being well advised in the premises, doth find that the bills of complaint state facts sufficient to constitute a cause of action against the defendant and to entitle complainant to equitable relief; and the motion to dismiss should be and is overruled, to which ruling an exception is allowed to defendants.

The court further finds that plaintiff is entitled to remove its shops and division point from Sapulpa to West Tulsa, in the State of Oklahoma, upon the grounds and for the reasons stated in its said bills of complaint; that to deprive complainant of this right would cause great and irreparable loss to complainant and serious inconvenience to the traveling and shipping public; that the Corporation Commission of Oklahoma is without authority, in the situation here presented, to prevent such removal, and that such action on its part would, in the instant case, constitute a burden upon interstate commerce.

[fol. 123] It is therefore considered, adjudged, and decreed that the injunction and relief prayed for by plaintiff herein should be in all things granted and that the defendants, J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma, Frank C. Carter, Fred Capshaw and C. C. Childers, individually, and as members of the Corporation Commissioner of the State of Oklahoma, and all persons similarly situated, and all persons acting with or by the authority of any of said defendants, or as their successors, should be perpetually enjoined from proceeding further in a certain action pending before the Corporation Commission of the State of Oklahoma, wherein

the said J. F. Lawrence and C. C. Taylor as complainants and the St. Louis San Francisco Railway Company as defendant, said cause being numbered 2827 of the Corporation Commission of the State of Oklahoma, which said action has as its purpose the prevention of the said St. Louis San Francisco Railway Company from removing its shops and division point from the City of Sapulpa, and from putting into effect certain changes in the movements of its trains according to the schedule put into effect by said Railway Company,

[fol. 124] It is further ordered, adjudged, and decreed that said defendants, J. F. Lawrence, C. C. Taylor, Edgar Rahmy, Attorney General of the State of Oklahoma, Fred C. Taylor, Fred Sharp and C. C. Hiller, individually, and as members of the Corporation Commission of the State of Oklahoma, and all persons similarly situated, and all persons acting with them, their agents, servants, employees and successors, and all persons acting by or under their authority, or the authority of any of them, and all persons for whom the said J. F. Lawrence and C. C. Taylor appear in the said above described cause, as pending before the Corporation Commission of the State of Oklahoma, be and all of them are hereby enjoined and restrained from proceeding, hearing or conducting, or permitting a hearing to be had, or taking or permitting any further proceedings in the above described cause of action now pending before the Corporation Commission, or any action of like nature; that said defendants, and each of them, are hereby further restricted and enjoined from ever, promulgating or enforcing, or causing to be made, promulgated or enforced, any order prohibiting the above named plaintiff from removing any of its shops or appurtenances thereto, its division [fol. 125] point or any part thereof, or from changing the run of any of its trains named in the schedule above referred to or from changing the run of any of the crews on said trains now in said schedule, or doing anything that will in any manner interfere with or prohibit plaintiff from removing its shops, or any appurtenances thereto, or its division point, or any part thereof, or in changing the run of any of its trains, or from interfering in any manner with the removal of said shops and division point as already

made; that all costs accruing in said action except such costs and expenses as have already been adjudged and taxed in favor of defendants be taxed to the plaintiff in the temporary injunction in this case, shall be taxed against the defendants herein, and that plaintiff shall have execution therefor.

Tulsa, Oklahoma, March 11, 1926.

Kirk W. Van Valkenburgh, Circuit Judge. Oliver S. Kennedy, District Judge. F. E. Kennamer, District Judge.

[Title omitted.]

[Title omitted.]

Mr. C. B. Stuart and Mr. Ben Franklin, (Mess. Elvin Bellatti, Attorney General, Mr. E. T. Miller and Mr. S. H. Cline of counsel) for complainant.

Mr. T. L. Blakemore and Mr. D. A. McDonald, (Messrs. Jones, Kane & Graham of counsel) for respondents.

Before Van Valkenburgh, Circuit Judge, and Kennedy and Kennamer, District Judges.

Memorandum Opinion on Motion to Dismiss.

Van Valkenburgh, Circuit Judge.

It appears from the bill of complaint that more than thirty years ago the St. Louis-San Francisco Railway Company built and acquired lines of railroad extending from Enid [illegible] the cities of St. Louis and Kansas City, in the State of Missouri, to Tulsa, in the State of Oklahoma, at which point said lines of railroad united and extended in a single line in a southwesterly direction into the State of Oklahoma and the cities of Tulsa and Sapulpa in said State, and thereafter there were built lines of railroad extending south from said City of Sapulpa into the State of Texas to the City of Wichita in said State, and also a line of railroad extending west from said City of Sapulpa through

Oklahoma City, Lawton and to the City of Quanah in the State of Texas; that owing to the fact that at the times of the construction of said lines of railroad complainant herein received a large volume of its business from the vicinity of the City of Sapulpa, and owing to the further fact that it appeared to those having to do with the construction of said lines of railroad at said times that the City of Sapulpa would become the business shipping center of its locality, complainant located, built and constructed at the said City of Sapulpa certain railroad shops and a division point on said lines of railroad, and that said shops and division point have been maintained and operated at the said City of Sapulpa up to the time this suit was filed; that on the first day of November, 1916, complainant became the owner by purchase of the above named lines of railroad and railroad shops, and has since owned and operated the same; that during the month of February, 1917, defendants J. F. [fol. 128] Lawrence and C. C. Taylor, appearing on behalf of themselves, the Chamber of Commerce of the City of Sapulpa, and the citizens of said city, filed complaint with the Corporation Commission of the State of Oklahoma, for the purpose of preventing complainant from moving its said shops and division point from the City of Sapulpa to the City of Tulsa on its line of railroad; that thereafter, on the 15th day of February, 1917, the Corporation Commission of the State of Oklahoma issued its order temporarily restraining complainant from moving its said shops or division point as aforesaid. A partial hearing was had on this complaint and an adjournment taken. During that adjournment, in 1917, the Legislature of the State of Oklahoma passed the following Act, now found as sections 3482, 3483, 3484 and 3485 of the Compiled Oklahoma Statutes of 1921:

"3482. That no person, receiver, firm, company or corporation owning, operating or managing any line of steam railroad in this State shall be allowed to remove railroad shops or division points which have been located at any place in this state for a period of not less than five years without previously securing the permission of the Corporation Commission to make such removal.

"3483. If, and when any such person, receiver, firm, company or corporation desires to remove any such railroad

shops or division point described in Section One of this Act, it shall be his duty to file an application with the Corporation Commission setting forth the present location of such shops or division point and the reasons for such removal, and thereupon the Corporation Commission shall have full power and jurisdiction to entertain such complaint, but before hearing the same or making any order permitting such removal to be made, said cause shall be set down for hearing, not less than ten days' notice shall be given the city, town or village in which or at which such shops or division point have been maintained, and after giving all parties interested a full and complete hearing in the premises the Commission may in its discretion permit or refuse such request for a removal.

[fol. 129] "3484. When an application is filed before the Commission for the removal of terminals or car shops, as provided in Section Two, the Commission shall hear evidence on the relative efficiency and expense of handling traffic through the proposed terminal as compared with the present facilities, and shall consider all other facts and circumstances affecting the various interests involved. In determining the adequacy of the present facilities the Commission shall consider the same increased by an expenditure equal to an amount necessary to remove the same to the proposed location or an amount equal to the necessary expenditure to establish such facilities at the new location. It is hereby further provided that the Commission shall hear evidence and shall make a finding of fact as to the sanitary and habitable conditions of the proposed location with reference to whether the same would endanger the health of the employes of the applicant or the health of their families. If the Commission should find that the sanitary or habitable conditions at the proposed location of said terminal facilities would endanger or injuriously affect the health of the employes of said applicant or their families, the Commission shall deny said application and order the said terminal facilities and car shops to remain at the present location.

"3485. On any such hearing, as provided in this act, the presumption shall be against the removal and the burden of proof rest upon the applicant to show that such removal ought to be made."

Thereafter, no proceedings of any kind were had. It does not appear that any effort was made on the part of complainant to move its shops, if such had been contemplated.

The bill of complaint states further that conditions have so changed as to make it imperative on the part of the operators of said lines of railroad to locate extensive shops and yards at the City of Tulsa, and at a point therein known as West Tulsa, and to move said division point from the City of Sapulpa to the said City of Tulsa; that the latter city has developed into a city of approximately 125,000 inhabitants, and has become one of the largest, shipping cen- [fol. 130] ters in the State of Oklahoma; that immense oil fields and oil properties have been developed and constructed and are being operated in the vicinity of and in all directions from the City of Tulsa, which has become the center of such operations; that other industries, transacting great volumes of business have been located, and are now being located, in said city, and in the vicinity thereof, and use said city as their shipping center; that the City of Sapulpa has developed only to a very minor degree, the population being stated at approximately 20,000 people; that very few of the industries operated, as hereinbefore set forth, use Sapulpa, or the terminals there located, as a shipping center; that the topography of the ground in the vicinity of the Sapulpa yards and shops will not permit the location and construction of sufficient facilities for the transaction of the shipping business necessary to be transacted at the shops and division point located in that vicinity; that it has been, and will continue to be, impossible for complainant to construct at Sapulpa sufficient shops and yards to transact its necessary business; that because of improved conditions of roadbed, bridges, etc., the increase of motive power and the enlargement of engines and other equipment, it is now necessary to the proper conduct of business of complainant, as an interstate carrier, to increase the distances between its division points and large [fol. 131] shops; that complainant is engaged extensively in interstate commerce, carrying a large volume of such commerce, both freight and passenger, from Kansas City, Missouri, and points north and east, to Tulsa and other points within the State of Oklahoma, and to points south in

the State of Texas, and from St. Louis, Missouri, and points north, east and south, to Tulsa and other points within the State of Oklahoma, and other states to the south; that the facilities and equipment, constituting the shops and division point herein described, are necessary and imperative to the transaction of its said interstate business; that a removal of its shops and division point to Tulsa, and a consolidation of said shops with the shops now located at Tulsa, will enable complainant to promote and aid its interstate commerce business by eliminating annually hundreds of thousands of dollars of operating expense; that among many other items it will be able to save in wages of employees approximately $200,000 per annum; in operating material and equipment, approximately $70,000 per annum; in fuel, power and lights, approximately $25,000 per annum; that owing to the fact that it has been necessary for complainant to construct and maintain extensive shops and yards at Tulsa, in addition to the shops and yards at Sapulpa, if complainant is prevented from removing its said shops from Sapulpa to Tulsa, it will be necessary for complainant to maintain and operate, at great expense and loss, two extensive sets of shops and yards within eighteen miles of each other, thus entailing great addition and needless cost and expense, resulting in great confusion and congestion [fol. 132] of traffic, causing loss of time to shipments, and thus interfering with and placing a direct burden upon interstate commerce business; that in the proper conduct and operation of its railroad it becomes necessary from time to time for complainant to readjust its division points and to find better and more efficient, suitable and convenient places for repair work and for keeping its rolling stock and other instrumentalities of its railway used in interstate commerce in proper condition; that these matters are purely mangerial and necessary to be confided to such railway company the better to serve the public and its stockholders and investors. The foregoing are among the more important considerations urged by complainant in its bill as justifying the removal desired.

Anticipating this action on the part of complainant the respondents, Lawrence and Taylor, appearing for themselves, the Chamber of Commerce of the City of Sapulpa,

and the citizens of said city, procured from the Corporation Commission of the State of Oklahoma the following order:

"This cause coming on to be heard on this 29th day of December, 1926, upon motion of the complainants, and it appearing that the defendant is taking steps toward the removal of its shops and division point from the City of Sapulpa in violation of the order of this Commission entered on the 5th day of February, 1917, and in violation of the Act of the Legislature passed in 1917, it is ordered by the Commission that said cause be set down for hearing on the 17th day of January, 1927, and that in the meantime, and until the further order of the Commission, the defendant be, and it is hereby prohibited from moving its shops or division point from the City of Sapulpa, from changing the runs of either its passenger or freight trains, or from taking any other steps towards changing its division point for either passenger or freight service from the said City of Sapulpa."

[fol. 133] A hearing on this matter was set before the Corporation Commission for the 17th day of January, 1927. On January 11, 1927, complainant filed its bill against respondents herein charging that the statutes, hereinabove set forth, in so far as they are sought to be made applicable to the conditions hereinabove described are unconstitutional, confiscatory, arbitrary, unnecessary and void, and that as so applied they granted to the Corporation Commission authority to issue orders and decide questions directly regulating, affecting and constituting a burden on interstate commerce; that said orders are, therefore, beyond the authority of the Corporation Commission and, therefore, void, and that respondents be enjoined from compelling complainant to submit to the jurisdiction of the Corporation Commission in the matters aforesaid, in order that complainant may not suffer irreparable injury and damage that it otherwise must suffer if prevented from removing its shops as aforesaid.

A temporary restraining order was issued and a court, composed of the three judges now sitting, was convened for the hearing of the temporary injunction. At that hearing the crucial point submitted was the authority of the Cor-

poration Commission of the State of Oklahoma over the matter in controversy. Conceiving this to be the only substantial contested issue, and that its speedy determination by the court of last resort was desired, and was for the best interest of both parties, the court addressed itself broadly to a decision of that question, and being of opinion that the power of location of shops and divisions points by [fol. 134] an interstate railroad, as affecting its interstate traffic, was essential to the discharge of its obligations as an interstate carrier, and that the subjection of this right to state control would necessarily burden interstate commerce and contervail the spirit of the Act to regulate commerce, as amended, granted the temporary injunction prayed. Unfortunately these reasons, stated orally in announcing our decision, were not preserved in the record presented to the Supreme Court, and thus that court, on appeal, was not made aware of the considerations which governed our action.

The Supreme Court being of opinion that the state law prescribing an important change in local transportation conditions, without application to the State Commission, might be valid, considered it important that the demands of comity and courtesy should have been observed; that application to the Corporation Commission should have been made before resort to the injunction process in the federal court, the presumption being that the Commission would have granted the application for removal if the facts justified it and that irreparable injury to complainant for the short period deemed to be necessary for that hearing had not been made clearly to appear. The case, therefore, was reversed and remanded and the controverted point left undecided.

In their petition for appeal from the order granting the temporary injunction respondents prayed "that the proper order touching security be made without superseding the decree referred to and they tender bond in such amount as [fol. 135] the court may require." Accordingly complainant, as a condition to the granting of the temporary injunction, was required to give bond in the sum of $50,000, to cover such damages that might be sustained if it should

result that that temporary injunction was improvidently granted. In the absence of supersedeas the interlocutory decree set the railway free to remove its shops, subject, of course, to their restoration to the City of Sapulpa if the case should ultimately be decided against it. Pending appeal the removal took place. After the coming down of the mandate from the Supreme Court respondents filed motion for an order requiring complainant to restore the conditions with respect to shops and division point as they existed prior to the hearing on temporary injunction, and that further proceedings in the case should be stayed until that should be done. After full hearing this motion was denied, for reasons stated in the opinion of this court, filed November 28, 1927, to which reference is hereby made. At the hearing it was shown that the cost of such restoration would amount at least to $300,000; that if on final hearing the decree should favor complainant an additional expense of $300,000 would be incurred in removing the shops and division point again to Tulsa. It was the judgment of the court that the expenditure of removal should not be incurred until and unless the decision upon final hearing should make it necessary. Thereupon, the court ordered that "before further steps looking to a final hearing of this cause are taken, that said plaintiff should make applica- [fol. 136] tion the Corporation Commission of the State of Oklahoma, to dissolve its restraining orders heretofore made restraining said plaintiff from removing its shops and division point from the City of Sapulpa to the City of Tulsa, and to ratify the action of said road in removing its said shops and division point during the pendency of this cause," and that "final hearing of this cause be suspended until the result of said application to the Corporation Commission be ascertained, and it is further ordered that this court shall and will retain jurisdiction of this cause so that any action, order or judgment may be taken or made by this court that may be necessary to protect the rights of any parties hereto." Seasonably thereafter complainant made such application to the Corporation Commission and asked a hearing thereunder. Respondents, through their counsel, appeared before the Commission and opposed any hearing upon the

merits of the application until complainant had made the restoration of its shops and division point to Sapulpa, thereby, in effect, renewing before the Commission the motion to that effect which had been denied by this court, as above stated. The Corporation Commission ruled with respondents and declined to hear complainant's application until such restoration was made. The result of these proceedings was reported to this court in a supplemental bill of complaint, in which complainant prayed relief as in its original bill and for such other relief, either general or special, to which, in good conscience and equity, it might be entitled in the premises.

Thereupon, to the original bill, and this supplemental bill, respondents filed their motion to dismiss for the stated reason that the same "do not state facts sufficient to con-[fol. 137] stitute a cause of action against the defendants or to entitle the complainant to equitable relief." At the hearing thereon both parties announced their desire that the case be submitted for final decree upon this motion without further pleading or presentation. Arguments were made, authorities submitted, and a submission was made with that understanding.

At the argument counsel for respondents urged two propositions in support of their motion; first, that the bills show on their face that complainant has not exhausted its remedy before the state tribunal; that until it has done so it has no standing in this court; second, that the Oklahoma Statutes in controversy are constitutional and the authority of the Corporation Commission thereunder is controlling. Reliance is placed upon the decision of the Supreme Court on the former appeal, (Lawrence vs. St. Louis-San Francisco Railway Company, 274, U. S. 588) and upon the following cited cases:

Western & Atlantic R. R. vs. Georgia Public Service Commission, 267 U. S. 493;

Henderson Water Company vs. Corporation Commission, 269 U. S. 278;

International & Great Northern Ry. Co., et al. vs. Anderson County, et al. 246 U. S. 424.)

Other cases are, of course, cited in the original briefs, but the foregoing constitute the main reliance upon the question presented by this motion.

In the opinion of the Supreme Court of Lawrence vs. St. Louis-San Francisco Railway Company, supra, the considerations which governed the Supreme Court were ex- [fol. 138] pressly stated to be of weight on application for a preliminary or temporary injunction. The concern of that court was that conflict and irritation between state and federal authorities should be avoided whenever possible; that the federal power be not exerted unnecessarily, hastily, or harshly; that the demands of comity and courtesy, as well as of the law, be deferred to; and that the necessity of a temporary order to avoid irreparable injury and loss should clearly appear. The court did not undertake to determine whether the Oklahoma Statute, or the action of the Commission thereunder, was obnoxious to the federal constitution. The jurisdiction of this court to proceed to final hearing was recognized. In the opinion it is stated:

"No right or interest of the Railway would have been prejudiced by participating in the hearing before the Commission and awaiting the result thereof. The Railway would not thereby have waived its right to contest in the federal court the validity of the Oklahoma law. * * *

"The Railway asserts that the removal would result in an improved service and in economy in operation. If this appeared to be true, it was the duty of the Commission, under the Oklahoma law, to authorize of the removal, unless thereby the health of the employees of the Railway or of their families was imperiled. It is not to be assumed that the Railway proposed to remove the shops to an unhealthy location. * * *

"The effect of the Commission's restraining order was merely to keep things in statu quo until the final hearing in federal court."

"We have no occasion to determine whether the Oklahoma Act is obnoxious to the Federal Constitution. * * *

"The delimitation of the respective powers of the two governments (state and national) requires often nice ad-

justments. The federal power is paramount. But public interest demands that, whenever possible, conflict between the two authorities and irritation be avoided."

[fol. 139] There is nothing in this opinion which can be construed as a command that the matter must be referred to the Corporation Commission as a condition precedent to final hearing. But in order that the rule announced by the Supreme Court should be observed in spirit, as well as in letter, and that full deference should be accorded to the demands of comity and courtesy, we exacted application to the Commission before we would enter upon a final hearing of the case. The Commission has declined to hear the application until the performance of a condition which it is without power or authority to enforce. The denial by this court of present restoration was not made out of disrespect for the Commission nor in disregard of its legitimate authority in the premises. It was made in the exercise of what we deemed to be a sound discretion, under the circumstances now existing, for the prevention of what might be unnecessary expenditure, and pursuant to a jurisdiction which had attached, which was expressly retained, and of which this court could not be collaterally deprived. By making its application in good faith, and the refusal of the Commission to entertain that application, complainant has exhausted its remedy before that tribunal in a legal sense. Since this result was brought about at the instance and demand of respondents, they can no longer be heard to insist upon a decision which they opposed and prevented. We proceed to a consideration of the merits of the controversy.

Western & Atlantic Railroad vs. Georgia Public Service Commission, et al., 267 U. S. 493, had to do with a bill to enjoin a State Commission from enforcing an order requiring the plaintiff railroad to maintain service on an in- [fol. 140] dustrial switch track. Intrastate switching service was involved. It was held that under section 402 a Railroad Company could not appeal from an order of a State Commission requiring it to continue switching service on the ground of discrimination until it had invoked the investigation and decision of the Interstate Commerce Commission on this point. Also, the power to order its estab-

lishment or abandonment of such side tracks, though employed largely for its interstate commerce, is not with the Interstate Commerce Commission, but with the States. Under the Act the Federal Commission cannot order abandonment of service exclusively intrastate. (State of Texas vs. Eastern Texas Railroad Company, et al., 258 U. S. 204). This case, therefore, has no application to the point now under consideration.

Henderson Water Co. vs. Corporation Commission of North Carolina, et al., 269 U. S. 278, was an appeal under section 266 of the Judicial Code from an order refusing temporarily to enjoin the enforcement, as confiscatory, of rates established by the Commission until the period of test prescribed in the order had expired. The Commission had allowed a partial increase and reserved to the Water Company the right to apply for further relief at the end of a test period. It was held that the company must exhaust its remedy with the Commission before suing in the district court. This case announces a principle frequently laid down in rate cases, and has no bearing upon the issue now before us.

International & Great Northern Railway Company, et al. vs. Anderson County, et al., 246 U. S. 424, was decided [fol. 141] upon the facts peculiar to that case. It was held that foreclosure and sale of a railroad in a federal court will not relieve the purchaser from a contractual or statutory duty, which rested on its predecessors under state law, to maintain offices and shops at a particular place. There the petitioning railroad was organized under the laws of State of Texas, and was, therefore, a Texas corporation. The Office Shops Act of Texas, containing a prohibition against removal of offices and shops located by contract within a county in consideration of county bond aid, was in effect at the time the railway company took out its charter under general laws that expressly subjected it to the limitations imposed by existing law. It was made a condition of incorporation that this restriction should be accepted. The decision was expressly based upon the special facts there appearing. The court said:

"We are not prepared to say that in this instance the State has transcended its powers."

The case of Texas and Pacific Railway Company vs. Marshall, 136 U. S. 393, more nearly applies to the case under consideration. In that case it appears that:

"The City of Marshall agreed to give to the Texas and Pacific Railway $300,000 in County bonds, and 66 acres of land within the city limits for shops and depots; and the company 'in consideration of the donation' agreed 'to permanently establish its eastern terminus and Texas offices at the City of Marshall, 'and to establish and construct at said city the main machine shops and car works of said railway company.' The city performed its agreements, and [fol. 142] the company, on its part, made Marshall its eastern terminus, and built depots and shops, and established its principal offices there. After the expiration of a few years Marshall ceased to be the eastern terminus of the road, and some of the shops were removed. The city filed this bill in equity to enforce the agreement, both as to the terminus and as to the shops; Held,

(1) That the contract on the part of the railway company was satisfied and performed when the company had established and kept a depot and offices at Marshall, and had set in operation car works and machine shops there, and had kept them going for eight years and until the interests of the railway company and of the public demanded the removal of some or all of these subjects of the contract to some other place;

(2) That the word "permanent" in the contract was to be construed with reference to the subject matter of the contract, and that, under the circumstances of this case it was complied with by the establishment of the terminus and the offices and shops contracted for, with no intention at the time of removing or abandoning them;

(3) That if the contract were to be interpreted as one to forever maintain the eastern terminus, and the shops and Texas offices at Marshall, without regard to the convenience of the public, it would become a contract that could not be enforced in equity;

(4) That the remedy of the city for the breach, if there was a breach, was at law."

The rule announced in this case has never been modified nor impaired. It is cited with approval in Armour & Company, et al. vs. City of Dallas et al., 255 U. S. 280. To us it seems inconceivable that the managerial control of an interstate railway over the location of its shops and division points, for the purpose of coordinating its facilities in the discharge of its interstate commerce business, should be made subject to the control of the individual states acting [fol. 143] in the interest of local communities and to the disadvantage of public convenience generally. It has been consistently held that interstate rates cannot be made the subject of private contract.

> New York, New Haven & Hartford R. R. Co. vs. Interstate Commerce Commission, 200 U. S. 361; Armour Packing Co. vs. United States, 209 U. S. 56.)

The same principle, in our judgment, applies generally to all essential instrumentalities of interstate commerce.

As said by the Supreme Court, in the instant case, the federal power is paramount. Upon the undisputed allegations of the bills, with the attending presumptions, the removal of these shops and this division point is demanded in the interest of economy in operation and improved service to the shipping and traveling public. The policy of the railway in this regard accords with the spirit of latest progressive legislation for maintaining the efficiency and economical operation of an interstate commerce railway system which serves both the states and the nation. (Dayton-Goose Creek Ry. vs. United States, 263 U. S. 456-485.) It follows that the motion to dismiss will be overruled and that in conformity with the terms of this submission a decree will be entered in favor of complainant. All concur.

[fol. 144] In United States District Court

[Title omitted]

Service of Appeal. Filed March 17, 1928

To St. Louis San Francisco Railway Company and Stuart, Cruce and Franklin, its attorneys of record:

This is to notify you that the defendants, J. F. Lawrence, C. C. Taylor, Edwin Blakney, Attorney General of the State

of Oklahoma, Frank C. Carter, Fred Capshaw and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, appeal to the Supreme Court of the United States from the judgment and decree of this court, made and entered herein on the 22nd day of October, 1927, overruling defendants's motion for restitution, and the order and judgment of this court made and entered herein on the 12th day of March, 1928, overruling defendant's motion to dismiss complaint and supplemental complaint of plaintiff herein, and entering judgment in favor of complainant, and that said appeal will be perfected by filing with the clerk of said court this notice of appeal.

P. K. Morrid, Assistant Attorney General, C. B. Ames, Attorneys for Defendants and Appellants.

Due and timely service of the foregoing notice of appeal is hereby acknowledged to have been made is accepted on this 15 day of March, 1928.

St. Louis San Francisco Railway Co., by C. B. Stuart, Ben Franklin, Its Attorneys.

[File endorsement omitted.]

[fol. 145] In United States District Court

[Title omitted]

Petition for Appeal and Order Allowing Same—Filed March 17, 1928

To the Honorable Franklin E. Kennemar, Judge of the District Court of the United States for the Northern District of Oklahoma:

The above named defendants, J. F. Lawrence, C. C. Taylor, Edwin Dabney, attorney general of the State of Oklahoma, Frank C. Carter, Fred Capshaw and C. C. Childers, individually, and as members of the Corporation Commission of the State of Oklahoma feeling themselves aggrieved by the order and judgment made and entered in this cause on the 12th day of March, 1928, overruling motion of the defendants to dismiss the complaint and supplemental complaint of the plaintiff herein, and rendering judgment

against the defendants herein, and the order and judgment of the court made and entered herein on the 22nd day of October, 1927, overruling the motion of the defendants for restitution, do hereby appeal from said decree, judgments and orders to the Supreme Court of the United States, for the reason specified in the assignment of error, which is filed herewith, and they pray that this appeal be allowed, that citation issued as provided by law, and that a tran-
[fol. 146] script of the record, proceedings and papers from which said judgments and orders were granted duly authenticated may be sent to the Supreme Court of the United States sitting at Washington, under the law in such cases made and provided:

Your petitioners further pray that the proper order touching security without superseding the decree referred to and they tender bond in such amount as the court may require.

C. B. Ames, T. L. Blakemore, Attorneys for the Defendants J. F. Lawrence and C. C. Taylor. P. K. Morril, Attorneys for Defendants Edwin Dabney, Frank C. Carter, Fred Capshaw, and C. C. Childers.

Order Allowing Appeal

Now, on this 17th day of March, 1928, come the above fendants presented this petition for appeal, and upon consideration, it is ordered that the appeal be and the same is hereby allowed upon the giving of bond for cost, as required by law, in the sum of Five Hundred ($500.00) Dollars.

F. E. Kennamer, Judge of the United States District Court for the Northern District of Oklahoma.

[File endorsement omitted.]

[fol. 147] In United States District Court

[Title omitted]

Assignments of Error—Filed March 17, 1928

Now, on this 17th day of March, 1928, come the above named defendants by their solicitors, and say, that the order

of the Court entered in the above cause on the 22nd day of October, 1927, and the order and judgment of the court entered on the 12th day of March, 1928, are erroneous and unjust to the defendants for the following reasons:

1. That the court erred in overruling the motion of the defendants for restitution.

2. That the court erred in overruling the motion of the defendants to dismiss the complaint and the amended complaint of the plaintiff.

3. The court erred in rendering judgment in favor of the plaintiff and against the defendants.

4. The court erred in holding that the Act of the Legislature of 1917, pleaded in the Bill of Complaint in said cause, is in violation of the Constitution of the United States and void.

Wherefore the defendants pray that said orders, decrees [fol. 148] and judgments be reversed.

C. B. Ames, T. L. Blakemore, Attorneys for Defendants J. F. Lawrence and C. C. Taylor. P. K. Morril, Attorneys for Defendants Edwin Dabney, Frank C. Carter, Fred Capshaw, and C. C. Childers.

[File endorsement omitted.]

[fols. 149-151] Bond on appeal for $500.00 approved and filed March 17, 1928, omitted in printing.

[fol. 152] In United States District Court

[Title omitted]

Notice of Perfection—Filed March 17, 1928

To the St. Louis-San Francisco Railway Company, complainants:

You will please take notice that the above named defendants and appellants, will, on the 17th day of March, 1928,

file with the Clerk of the above named Court, together with proof, acknowledgment of service of the same, a præcipe for the portions of the record to be incorporated in the transcript of appeal, a copy of which præcipe is hereto attached and made a part of this notice.

Dated this 15th day of March, 1928.

J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma; Frank C. Carter, Fred Capshaw, and C. C. Childers, Individually and as Members of the Corporation Commission of the State of Oklahoma, Defendants and Appellants, by P. K. Morril, C. B. Ames, T. L. Blakemore, Their Counsel.

[fol. 153] Due and timely service of the foregoing notice, together with copy of præcipe attached thereto is acknowledged to have been made, and is accepted this 15 day of March, 1928.

St. Louis-San Francisco Railway Co., by Stuart & Franklin, Its Attorneys.

[File endorsement omitted.]

[fol. 154] In United States District Court

[Title omitted]

Præcipe for Transcript of Record—Filed March 17, 1928

To the Clerk of the District Court of the United States for the Northern District of Oklahoma:

In making up the record and transcript for the Supreme Court of the United States in the above entitled cause, you are hereby notified as follows:

First. That the appellants elect to have the record herein printed under the supervision of the Clerk of the Supreme Court of the United States and under the rules of that court.

Second. That you will include in the record and transcript only such parts as are herein mentioned, omitting all other parts of the record, that is to say:

1. The original Bill of Complaint filed in said [fol. 155] cause.

2. Motion of defendants for restitution filed on the 25th day of June, 1927.

3. Plaintiff's amendment to complaint.

4. Transcript of the proceedings on October 22nd, 1927, on hearing of defendants' motion for restitution.

5. Order directing plaintiff to make certain application with the Corporation Commission of the State of Oklahoma, made on the 22nd day of October, 1927.

6. Opinion and order of the court overruling defendants' motion for restitution filed 22 day of Oct. 1927.

7. Supplemental Complaint.

8. Defendants' motion to dismiss plaintiff's Complaint and Supplemental Complaint.

9. Order and judgment of the court made and entered on the 19th day of March, 1928, overruling defendants' motion to dismiss complaint and supplemental complaint of plaintiff's, and rendering judgment against defendants.

10. Opinion on final hearing.

11. Petition for allowance of appeal.

12. Assignments of error.

13. Bond on appeal.

14. Citation of appeal.

15. Notice of Præcipe and this Præcipe.

16. Notice of Appeal.

P. K. Morrd, Assistant Attorney General, C. B. Ames, T. L. Blakemore, Attorneys for Defendants and Appellants.

[fol. 156] All formal ties of the time and manner of serving the aforesaid præcipe are waived, and the appellee agrees that the præcipe may be filed; that it calls for all papers which should become a part of the record and that the same may be incorporated in the transcript on appeal without further notice to us.

Dated this 15th day of March, 1928.

St Louis San Francisco Railway Co., by C. B. Stuart, Its Attorneys.

[File endorsement omitted.]

[fol. 157] Certificate of H. P. Warfield, Clerk of D. C. U. S., Northern Oklahoma, to foregoing transcript omitted in printing.

[fol. 158] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation by Appellants of the Parts of the Record to be Printed —Filed March 30, 1928

In compliance with the rule, the Appellants respectfully state the following points on which they intend to rely:

The errors assigned in this case are that the Court erred in overruling the motion of the Appellants to dismiss the bill of the Appellee; that the Court erred in overruling the motion of the Appellants to require the Railway Company to make restitution by returning its shops and division point to the City of Sapulpa; that the Court erred in rendering judgment in favor of the Appellee against the Appellants and that the Court erred in holding that the Act of the Legislature of Oklahoma in 1917, pleaded in the Bill of Complaint in said case violates the Constitution of the United States.

In presenting these assignments of error, the Appellants will rely upon the following propositions:

1. This action was prematurely brought.

The Act of the Legislature in question provides that, after a railroad company has maintained its shops and [fol. 159] terminals at any given point in the state for a period of five years, that it cannot remove them until after presenting an application to the Corporation Commission, and securing an order permitting it to do so. The Appellee in this case filed a bill without presenting such an application. While this case was pending on appeal in this court, the Appellee moved its shops and division point from Sapulpa to West Tulsa in violation of the statute and of the two previous orders of the Corporation Commission. Thereafter, the Appellants, or some of them, filed a motion in the District Court to require Appellee to return its shops and division point. The District Court denied the motion, but directed Appellee to make application to the Corpora-

tion Commission for an order ratifying its action in removing its shops and division point in violation of the statute, and of the previous orders of the Commission. The Commission declined to entertain this application because the Appellee was in contempt of its previous order. The Commission, therefore, has never passed on the right of the Appellee to move from Sapulpa, and Appellants contend that, therefore, this action is prematurely brought.

2. The statute involved is a valid exercise of the police power of the state, being enacted for the preservation of the health, safety, and convenience of the railroad employees, of the communities in which shops and terminals are located, and of the general public's welfare.

3. The statute involved is a valid exercise of the power of the state to regulate railroads, there having been no assertion of national power over the subject.

4. The statute involved is not a regulation of interstate commerce, and if it affects interstate commerce at all, does [fol. 160] so remotely and indirectly.

5. It was the duty of the District Court, after this Court had revised its previous order granting a temporary injunction, to require the railroad company to restore the status quo existing at the time when temporary injunction was issued.

6. Upon the application in the District Court for an order of restitution, the matter should have been heard by the District Judge and not by a three judge court.

In view of the fact that the record consists almost entirely of the pleadings, the Appellants request that the entire record be printed, as they believe this course is necessary for the proper presentation of the points on which the Appellants rely.

Edwin Dabney, Atty. Gen., T. L. Blakemore, C. B. Ames, Attorneys for Appellants. Ames, Cochran & Ames, of Counsel.

The undersigned, Attorneys for Appellee, hereby accept service of a copy of the above entitled paper, and concur in the request to have the entire transcript printed, waiv-

ing the time allowed by the rules for designating additional parts of the record.

C. B. Stuart, Cruce & Franklin, Attorneys for Appellee.

[fol. 161] [File endorsement omitted.]

Endorsed on cover: File No. 31,313. N. Oklahoma D. C. U. S. Term No. 861. J. F. Lawrence, C. C. Taylor, Edwin Dabney, etc., et al., appellants, v. St. Louis-San Francisco Railway Company. Filed March 24th, 1928. (31,313.)